Theologia Moralis

Volume V
On the Sacrament of Matrimony; and on Censures and Irregularities

St Alphonsus Maria de Liguori

(Sancti Alphonsi de Ligorio)

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Note on this translation. This English text was produced by a machine-assisted translation pipeline from an OCR transcription of the source Latin edition. The draft translation was made by a specialised translation model, assisted by a dedicated ecclesiastical-Latin knowledge base which supplied Douay–Rheims wording for Scripture quotations and verified place-names and terminology. It is an unofficial reading aid and has *not* undergone formal scholarly revision; occasional errors will remain, particularly in the dense citation apparatus. Marginal references of the form [*Latin ed. p. N*] indicate the corresponding page of the source edition, for alignment with the original scans. Blank leaves and unreadable pages have been omitted.

[*Latin ed. p. 9*]

THE MORAL THEOLOGY of Saint Alphonsus de Liguori, Founder of the Congregation of the Most Holy Redeemer and formerly Bishop of Saint Agatha of the Goths. The following are included: 1. A Dissertation by Father Zacharias on Saint Alphonsus' Moral Theology. 2. A Handbook for Confessors to improve confessions. 3. An Examination for those to be ordained. 4. A Summary of the Moral and Canon Law of Benedict XIV. 5. Decrees of the Roman Pontiffs and their pronouncements on moral theology. 6. An Appendix on Privileges. 7. An Appendix on the Prohibition of Harmful Books. 8. A List of Questions Reformed. 9. An Index of Authors cited in this work. 10. A General Index.

THIS NEW EDITION, THE MOST ACCURATE OF ALL, HAS BEEN COMPARED WITH THE EDITIONS OF VENICE, ROME, AND BASSANO, AND CONTAINS EVERYTHING THAT THE AUTHOR ADDED, REVISED, OR EXPLAINED IN OTHER EDITIONS. Many things omitted in other editions have been restored, countless citations have been corrected, many errors of the press have been corrected, and necessary annotations have been added, by Father Michael Heilig, of the Congregation of the Most Holy Redeemer, of Pampyter, and Professor of Moral Theology. VOLUME FIFTH.

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[*Latin ed. p. 11*]

52164 RCH 9/1/12/23 THEOLOGIA MORALIS. LIBRI SEXTI TRACTATUS VI. DE MATRIMONIO. CAPUT I. DE SPONSALIBUS. DUBIUM I. Quid sunt sponsalia?

331. Promissio sponsalitia, ut sit valida, debet esse voluntaria, et deliberata.

332. An teneatur ad matrimonium fictis promittens sponsalia alteri repromittenti?

333. Quid, si quis voluit promittere, sed non se obligare?

334. Quando obligentur pueri?

335. An sint valida sponsalia contracta per dolum?

336. Promissio debet esse matua. Quaestio I. An acceptans sponsalia intelligatur repromittere?

337. Quaestio II. An quis possit se obligare ad nuptias vi gratuitas promissionis? Et utrum hæc obliget sub gravi?

338. Promissio debet esse expressa signo. Quid, si parentes contrahant pro filiis tacentibus?

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339. Dubium 1. Quid, si extranei? Dubium 2. An sufficiat, si parentes promittant pro filiis absentibus?

340. Sponsalia debent fieri inter habiles. Quid, si verba, vel signa sint dubia?

341. Verba de præsenti apta ad matrimonium inter impuberes habent vim sponsalium. An idem valeat inter puberes in matrimonio clandestinis contracto?

343. An sufficiat ad sponsalia dicere: Non ducam aliam quam te? An dicere: Contraham, si Papa dispensaverit? An sufficiat subarrhalio annuli, et missio munerum? Quid, si parentes annulum mittant?

344. Quaestio I. An sponsalia contracta per metum gravem sint per se nulla? Quaestio II. Quid, si per metum levem? Quaestio III. An, qui contraxit ea metu levi, possit sponsalia rescindere?

334. — R. S. Sunt promissio voluntaria, deliberata, et matua, signo sensibili expressa, futuri matrimonii inter personas jure habiles. Tom. V. 1.

[*Latin ed. p. 12*]

It is called a *promissa* (promise), because the mere intention is not sufficient, since it does not create an obligation. Therefore, he who were to say: "I wish to take you, have you, or lead you in marriage," would not enter into betrothal, as Bonaventure teaches in question 4, page 4, from others, because these words do not signify a promise, but only the intention of a promise, unless something else is inferred from the circumstances. It is called *voluntaria* (voluntary) and *deliberata* (deliberate), that is, with sufficient deliberation for a mortal sin, since betrothal involves a mortal obligation. Diana, page 3, volume 4, rule 273, from Sanchez, Pontifical Law, etc., although Bonaventure, in question 4, page 4, number 4, requires more. Therefore, regularly, they are not valid before the completion of seven years, as the Decretals teach in d. 22, a. 5, and Sanchez in l. 4, d. 16. Unless malice and prudence compensate for the lack of age, Diana, volume 4, page 5, rule 274, Pontifical Law, etc. (although some deny that these suffice, since the law determines the age). Indeed, not even after seven years, if there is no sufficient use of reason, as neither if it is done by force, deceit, error, or ignorance concerning the substance, or a notable substantial condition, according to the statements concerning vows and contracts. 832.

Quaestio: Is one bound to enter into marriage who fictitiously promises betrothal to another, who in turn promises in return? This fictitious promise can occur in several ways: 1. If he did not have the intention of entering into betrothal. 2. If he did not have the intention of obligating himself. 3. If he did not have the intention of fulfilling [the promise]. In the first case, it is certainly not necessary to abide by the promises, since the intention to promise is completely lacking. Thus, Viva, on marriage,

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question 4, article 4, number 4, and Salm, ibid., title, chapter 4, page 3, number 25, on contracts, chapter 4, page 4, number 7, with Sanchez, Lugo, Sylv., etc., in common. On the contrary, in the third case, it is certain that one is bound, because he has already incurred an obligation. See Salm, on marriage, cited, number 23, and Viva, numbers 3 and 7, where they rightly point out that if someone knew that an obligation would arise from the promise, but did not realize it, he would still be bound by the promise, because he already had a virtual intention to obligate himself. 833.

The question is only about the second case, when someone wanted to promise, but did not want to obligate himself; and the answer is: if he himself was ignorant that an obligation would arise from that promise to enter into marriage, it is certain that he is not bound, as Salm says there, number 26, with commentary (whatever others may think); because he who is ignorant of the nature of the promise does not have a true intention to promise. Therefore, it is doubtful whether one is bound to marriage who, knowing the nature of the promise, fictitiously promises betrothal, but does not truly intend to obligate himself to marriage? The first opinion says that this person not only sins mortally against justice, but is also bound by justice to enter into marriage; and he is not excused if he wishes to compensate the other in some other way. The reason is that in the very promise, when it is true, there is necessarily an obligation inherent to it; but when someone does not at all want to promise, he is not at all obligated, but when he truly promises, he cannot refuse to be obligated according to the condition of the contract; he cannot separate the promise from the obligation.

[*Latin ed. p. 13*]

They [i.e., certain authorities] maintain that there is no obligation to enter into marriage; thus, Pont. de matr. l. 12, c. 2, n. 7, with Vasq. Viva l. c. n. 2, v. 3. I say 3; also, Sot. Lop. Led. Arag. Gutt. etc., apud Sanch. However, the second opinion, which we consider more probable, and which is held by Sanch. de matr. lib. 1, disp. 9, n. 5, and disp. 10, n. 25, Pal. p. 2, n. 2, Laym. c. 1, n. 10, Less. c. 18, n. 62, Holzm. c. 1, n. 117, Spor. c. 1, n. 154, Escob. l. 24, n. 92, Renzi de matr. c. 1, sect. 1, qu. 3, Tamb. eod. tit. l. 8, c. 1, §. 4, n. 5, Mazz. c. 2, §. 1, and Salm. l. c. n. 28, with Bonac., Bec., Aversa, Vill. Cornejo, and Diana, asserts that there is no obligation to contract marriage. The principal reason is that every obligation which does not arise from the law originates from the private will of a person; therefore, where there is no will to obligate oneself, the obligation fails. And this is so even if the promise has been confirmed by an oath, as taught by Sanch. d. disp. 9, num. 9, with S. Bonav., S. Anton., Medina, Pal., and others. Escob. num. 95, with Richardo, Gabr., and Salm. de matrim. c. 1, p. 3, n. 29, with Bonac. and Aversa, etc. St. Thomas, who in 3 dist. 39, q. 1, a. 3, q. 3, teaches that an oath does not obligate where there is no intention to obligate oneself, for an oath follows

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the nature of a promise. The contrary reason mentioned above does not invalidate this, because, even if the promisor should have sinned against justice by deceiving the other party, the other party would not nevertheless be bound by justice to give true consent, since no obligation to enter into a contract was incumbent upon him, and the other party acquired no right in him from his consent; therefore, he is indeed bound afterwards by reason of the deception to compensate for damages, but he is not bound by reason of the promise to give true consent and to enter into marriage. Otherwise, it should be said differently if defloration has occurred, because then the one who has been deflowered is entirely bound to marry, since he cannot then compensate for the damage in any other way sufficiently, as we have said in l. 4, num. 642, 834.

It is sufficient for the validity of betrothals between children that the use of reason is recognized in them, probably, as in the case of children. This opinion is considered more probable by Salm. ibid. p. 6, n. 74, with Sanch., Conc., Dic. Bon., and others, against Pal., Avers., etc., who say that children before the age of seven are not bound. However, children, or their parents promising betrothals on their behalf, do not sin gravely, as stated by Salm. ibid. n. 77, with Conc., Sanch., etc., against Bonac. and Hewr. 835.

Whether betrothals contracted through deceit are void, even if they concern only the quality [of the person]? Sanch. de matr. l. 1, d. 64, n. 3, with Mol., Covar., etc., and the same is the opinion of P. Conc. and others whom we have cited in l. 4, n. 715, de contract. But there, we said that it is more probable that in that case the contract is not void, neither by natural law, since consent as to substance is already present, nor by civil law, as is clear from Instit. l. 4, tit. 13, de Except., the words of which we quoted in dict. n. 745. (1) Therefore, the deceived party then has the right to annul the contract (1) In the code of civil law, there is no special mention of betrothals.

[*Latin ed. p. 14*]

Because of injury and lack of consent, and this applies even if the deception originates from a third party, the ignorant party unaware, as taught by Sanchez with Covarrubias and others cited, book 6, number 4 and 5. Furthermore, it is quite probable, as related by Lessius, Laymann, and Sporer in the same book, number 715, and by Viva de Matrimonio, question 2, article 8, number 2, that the deceived party is not bound in conscience to fulfill the contract if his error was truly invincible (1). However, maintaining the first opinion, namely that betrothals are inherently invalid, does the deceived party remain free? This is affirmed by Sanchez in the aforementioned passage, and by Pontius, book 4, chapter 21, number 7, with the Council of Valence, etc. But the opposite is more probable, as we have frequently demonstrated, book 4, number 715, with Lugol, Lessius, Laymann, Palafox, etc., 836.

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It is said: "3. Mutual." Therefore, if Titus promises marriage to Caia, and she accepts without a reciprocal promise, neither party is obligated; because, since the contract of betrothal is onerous and reciprocal, it cannot fail; it involves a condition, namely, "if you promise in return." However, if Titus's promise had been absolute and gratuitous, and accepted by Caia, only Titus would be obligated, not by virtue of betrothal, but by a simple promise. Thus, Sanchez, book 3, book 5, against Pontius, cited by Diana, page 3, treatise 4, reason 244.

Question: Here, I. Does the very act of accepting betrothals imply a reciprocal promise? The first opinion affirms this, and this is held by Pontius, book 42, chapter 4, number 10, with St. Antoninus, Palafox, Sylvestri, etc., and is considered probable by Salm, de Ordinatione, chapter 4, page 2, number 46, with Vasquez, Henry, Lean, and Gabriel à Sancto Vincentio. The reason is that, just as the acceptance of marriage implies a virtual reciprocal promise, or a will to be bound thereby, since marriage cannot be valid if both parties are not bound; so too does the acceptance of betrothals, which follow the nature of marriage. From this, these authors, with Moller and Busembach, deduce that in the case where neither of the betrothed parties is bound, neither remains obligated.

The second opinion, however, which is more probable, denies this, and this is held by Bonaventure, question 4, page 1, number 7, the Council, volume 10, page 258, number 5, Sanchez, book 4, book 5, number 45, Laymann, chapter 4, number 2, Sporer, number 454, Escobar, number 68, with Soto, and Salm, de Matrimonio, chapter 4, page 2, number 48, with Dicena, Palafox, etc., who say that it is possible for the promise of one regarding a future marriage, and accepted by the other, to obligate without a reciprocal promise; nor does acceptance necessarily imply a reciprocal promise, because one person can accept the obligation of the other without obligating oneself. However, Salm, ibid., number 21, points out that this is understood if the promisor intended to obligate himself spontaneously, independently of the other's reciprocal promise, and this is certain; for in doubt, as they say, it should be considered (1).

"(1) Lessius, Laymann, Sporer, and Viva probably say that if the matter is integral, as happens in simple betrothals, and the error is invincible, the deceived party is not bound in conscience to fulfill the contract, not even by judicial sentence." From Homo Apostolicus, treatise 18, number 2.

[*Latin ed. p. 15*]

Those [persons] should separate themselves; thus, it is probable according to Pont. de matr. l. 12, c. 2, n. 7, with Vasq. Viva l. q., n. 2, v. 3; also Sot. Lop. Led. Arag. Gutt., etc., apud Sanch. The second opinion, which we consider more probable, is held by Sanch. de matr. lib. 1, disp. 9, n. 5, and disp. 10, n. 25; Pal. p. 2, n. 2; Laym. c. 1, n. 10; Less. c. 18, n. 62; Holzm. c. 1, n. 117; Spor. c. 1, n. 154; Escob. l. 24, n. 92; Renzi de matr. c. 1, sect. 1,

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qu. 3; Tamb. eod. tit. l. 8, c. 1, §. 4, n. 5; Mazz. c. 2, §. 1, and Salm. l. c., n. 28, with Bonac., Bec, Aversa, Vill. Cornejo, and Diana, who state that there is no obligation to contract marriage. The principal reason is that every obligation which does not arise from the law originates from the private will of a person; therefore, where there is no will to obligate oneself, the obligation fails. And this is so even if the promise has been confirmed by an oath, as taught by Sanch. d. disp. 9, num. 9, with S. Bonav., S. Anton., Medina, Pal., and others; Escob. num. 95, with Richardo, Gabr., and Salm. de matrim. c. 1, p. 3, n. 29, with Bonac. and Aversa, from D. Thom., who in 3 dist. 39, q. 1, a. 3, q. 3, teaches that an oath does not obligate where there is no intention to obligate oneself, because an oath follows the nature of a promise. The contrary argument mentioned above does not apply, because, even if the promisor has sinned against justice by deceiving the other party, the other party is not thereby obligated to give true consent, since there is no obligation on him to enter into a contract, and the other party has acquired no right in him from his consent; therefore, he is indeed obligated afterwards by reason of the deception to compensate for damages, but he is not obligated by reason of the promise to give true consent and to enter into marriage. Secondly, it must be said that if there has been defloration, then the one who has been deflowered is entirely obligated to marry, because he cannot then compensate for the damage in any other way sufficiently, as we have said in l. 4, num. 642, 834. It is sufficient for the validity of betrothals between children that the use of reason is recognized in them, probably. This opinion is considered more probable by Salm. ibid. p. 6, n. 74, with Sanch., Conc., Dic. Bon., and others, against Pal., Avers., etc., who say that children before the age of seven are not obligated. The children, nor their parents who promise betrothals on their behalf, do not sin gravely, as stated by Salm. ibid. n. 77, with Conc., Sanch., etc., against Bonac. and Henr. 835. Are betrothals contracted through deceit, which gives cause for the contract to be annulled, invalid, even if it concerns only the quality [of the person]? Sanch. de matr. l. 1, d. 64, n. 3, states this, with Mol., Covar., etc., and the same opinion is held by P. Conc. and others whom we have cited in l. 4, n. 715, concerning contracts. But there, we stated that in that case, the contract is probably not annulled, neither by natural law, since there is already consent as to substance, nor by civil law, as is evident from Instit. l. 4, tit. 13, de Except., the words of which we quoted in n. 745. (1) Therefore, the one who has been deceived then has the action to annul the contract

(1) In the French civil code, there is no special mention of betrothals.

[*Latin ed. p. 16*]

If the children, expressly or tacitly, consent, or if they are present and do not contradict, they are bound. The same applies not only if the father, but also if the mother, contracts on behalf of the child, as is correctly taught by Sanchez, n. 9; Pont. l. 2, c. 14, n. 2; Pal. p. 4, n. 12; Boss. cap. 3, n. 159,

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with Abb. and Salm. de matr. c. 1, p. 4, n. 47. This is inferred from the text itself, which does not say "fathers," but "parents"; and the reason is that in this case, regard is not had for paternal authority, but for the affection of the parents towards their children: for mothers love their children no less than fathers. Busemb. and Spor. also say the same, as mentioned above, regarding tutors and guardians who promise on behalf of wards and minors. However, Salm. de matr. c. 1, p. 4, n. 48, with Sanchez and Guttier, more probably denies this, because this applies only to parents. Nevertheless, this applies only to the external forum, as well noted by Bonac. and Roncag. ll. cc., and Holzm. de matr. n. 149, with Anacl. For in the internal forum, if the child dissents, he is certainly not bound by the betrothal contracted by the parents. And I believe the same must be said if the child has a negative disposition, neither dissenting nor consenting; for any obligation requires positive consent. The aforementioned text does not contradict this, as it says "they are bound"; for in the case of marriage, and likewise in the case of betrothal, which follows the nature of marriage, internal consent of the contracting parties is not sufficient, but external consent is required, either by words or by signs, as stated in can. Sufficiat, caus. 27, q. 2. Although betrothal contracted solely by internal consent is not valid, it is valid in this special case, as Boniface decides, namely, if the father contracts for the son who is silent and does not contradict; but the Pope must be understood to mean this only if the son internally and positively consents. And so, indeed, Bon. q. 1, p. 1, n. 11, and Salm. ibid. n. 46, agree, saying that the silence of the son only makes the betrothal valid when the son internally consents.

839. — Doubt 1. Is it special that the presence and silence of the children are sufficient, if the parents contract for them? Hostiens, Manuel, and Anchar, apud Sanchez, l. 1, d. 23, n. 6, deny this, saying that this applies even if an outsider contracts a betrothal for another who is present and silent; because, as they say, when it is a matter of something desirable, everyone who is silent seems to consent. This is confirmed by c. 1, de matr. contr. contra Eccles. etc., where betrothals begun by a brother for his sister, who is present and silently consenting, are judged to be valid, because the text weighs there some signs of tacit consent. And these opinions are also agreed upon by Vic. Henr. Led. and Sotus; but they speak only of the external forum. However, it is commonly and more truly affirmed that this is special in both forums for betrothals contracted by parents, by Escob. n. 169; Pal. p. 4, n. 17; Boss. c. 3, n. 165; and Sanchez, n. 7, with S. Anton. Palud. Innoe. Abb. Gabr. Covar. Tab. and many others from the Divine Thomas, in 4. d.

[*Latin ed. p. 17*]

It is the case that one does not wish to be obligated without a promise. And in such a case, it should be noted that these promises are not betrothals, and therefore do not constitute an impediment to public decency, but are

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merely gratuitous promises, obligating only one party, not by the force of betrothal, but by the force of mere fidelity. 837. — Question II. Can one obligate oneself to enter into marriage by the force of a gratuitous promise, while the other party remains free? The first opinion denies this, and this is held by Pont. l. 12, c. 4, n. 2, with Vasquez, Conc. p. 259, n. 6, and is called probable by Diana 3, p. tr. 4, r. 244. The reason is that the contract of betrothal is like a contract of mutual exchange; therefore, in it, no one can obligate themselves unless under the condition that the other also obligates themselves. The second opinion, however, which is more common and more probable, affirms this, and is held by Busemb., as above, and Sanch. l. 1, d. 5, n. 42, Laym. c. 1, n. 2, Bon. q. 1, p. 4, n. 8, Escob. l. 21, n. 71, Spor. n. 152, and Salm. ibid. n. 20, with Conc. Dic. et Avers. The reason is that, although by the force of a promise of betrothal, one cannot remain obligated while the other remains free; nevertheless, it is possible for someone to bind themselves by the simple force of a gratuitous promise, independently of the contract of betrothal. But does this promise obligate under a penalty? This depends on another question raised in l. 4, n. 720, where we said, with Cajetan, Bann., Led., and Salm., that the negative opinion is sufficiently probable based on the authority of D. Th. However, Spor. l. c. and Tamb. de matr. tr. 3, c. 1, §. 1, n. 4, rightly point out that, as a rule, betrothed parties do not intend to obligate themselves gratuitously without the condition that the other also obligates themselves. 838. — "It is said to be expressed by a sign; because a contract between men does not take place unless by an external sign." Therefore, tacit consent is not sufficient for betrothal, even with internal consent to a promise of marriage, which Titus makes to her. However, if a father or mother contracts for their son or daughter, or a guardian for someone whose care they have, in their presence and without contradiction, provided that there is no fear, the betrothal will be valid; because in this case, the law takes silence as an expression of consent. Sanch. l. 1, d. 22, Dian. p. 3, t. 4, r. 170, indeed, even if for an absent person: at least "if that person, knowing of it, expressly or tacitly ratifies it by some sufficient sign." Sanch., Pont., Dian. p. 3, t. 4, r. 171, contrary to Sot. and Henr., who do not require even this, but only that the person knowing of it does not contradict. This is admitted by Conin., if it is proposed to them by the guardians or parents themselves; then, if they are silent, they are considered to consent. If parents contract betrothals in the presence of their son, who remains silent and does not contradict, the betrothals are certainly valid, as commonly taught by Laym. c. 1, n. 43, Palaus p. 4, n. 42, Ronc. p. 433, q. 5, r. 1, Sanch. l. 1, c. 23, n. 5, and others throughout. And it is clear from cap. un. §. fin. de despons. impub. in 6, where Boniface VIII declared: "Furthermore, concerning betrothals which

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parents often contract for their pubescent or prepubescent children..."

[*Latin ed. p. 18*]

The children, if they expressly consent, or even tacitly, as if they were present and did not contradict, are bound. The same must be said, not only if the father, but also if the mother contracts for the child, as is rightly taught in common by Sanch. n. 9, Pont. l. 2, c. 14, n. 2, Pal. p. 4, n. 12, Boss. cap. 3, n. 159, with Abb. and Salm. de matr. c. 1, p. 4, n. 47; and this is inferred from the very text, where it is not said "fathers," but "parents"; and the reason is, because in this matter, regard is not had for paternal authority, but for the affection of the parents towards their children: for mothers love their children no less than fathers. Busemb. and Spor. also say the same, as mentioned above, concerning tutors and guardians who promise for wards and minors. However, Salm. de matr. c. 1, p. 4, n. 48, with Sanch. and Guttier, more probably deny this, because this provision applies only to parents. Nevertheless, this applies only to the external forum, as well noted by Bonac. and Roncag. ll. cc. de Holzm. de matr. n. 149, with Anael. For in the internal forum, if the child dissents, he is certainly not bound by the betrothal contracted by the parents. And I believe the same must be said entirely, if the child has a negative attitude, neither dissenting nor consenting; for any obligation requires positive consent. The aforementioned text does not contradict this, since it says "they are bound"; for in marriage, and likewise in betrothals which follow the nature of marriage, internal consent of the contracting parties is not sufficient, but external consent is required, either by words or by signs, as is stated in can. Sufficiat, caus. 27, q. 2. Although betrothals contracted solely by internal consent are not valid, they are nevertheless valid in this special case, as Boniface decides, namely, if the father contracts for the child who is silent and does not contradict; but the Pope must be understood to mean this only if the child internally and positively consents. And thus, truly, Bon. q. 1, p. 4, n. 11, and Salm. ibid. n. 46, agree with me, saying that the silence of the child only makes the betrothal valid when the child internally consents. 839. — Doubt 1. Whether it is special that the presence and silence of the children are sufficient, if the parents contract for them? Hostiens, Manuel, and Anchar, apud Sanch. l. 1, d. 23, n. 6, deny this, saying that this applies even if an outsider contracts a betrothal for another who is present and silent; because, as they say, when a desirable thing is involved, everyone who is silent seems to consent. And they confirm this from c. 1, de matr. contr. contra Eccles. etc., where betrothals begun by a brother for his sister, who is present and silently consenting, are judged to be valid, because the text weighs there some signs of tacit consent. And this opinion is also held by Vic. Henr. Léd. and Sotus, apud Sanch. l. c., speaking, however, only of the external forum. But it is most commonly and truly affirmed that this is special in both forums for betrothals contracted by parents, by Escob. n.

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169, Pal. p. 4, n. 17, Boss. c. 3, n. 165, and Sanch. n. 7, with S. Anton. Palud. Innob. Abb. Gabr. Covar. Tab. and many other esteemed Doctors, including the Divine Thomas, in 4. d.

[*Latin ed. p. 19*]

27. Question 4, Article 2. The reason is this: although marriage is, in itself, desirable, the obligation to enter into it is burdensome; but since parents are presumed to act with great love and to advise their children well, the children are considered to consent to the promise made by their parents. However, this reason does not apply to other cases. Nor does the rule of law, section 43, paragraph 6, which states: "He who is silent appears to consent," present an obstacle. For it is rightly stated by Salm. on marriage, chapter 4, paragraph 4, number 45, that Bonaventure and Ronayne hold that this applies in favorable circumstances, but not in obligatory ones; where, on the contrary, the opposite is presumed, and especially in betrothals, where (as we have said) explicit consent is required. Nor does the text cited above present an obstacle, for Escobedo, in his commentary on the same, with the Glossa, rightly states that explicit consent was indeed present there, and that the text expresses other tacit signs, in order to confirm that true consent was expressed through those signs. However, Sanchez, number 14, with others, rightly accepts the first opinion, if somewhere (as is the case among the Indians) there is a custom that consent is expressed through others. Doubt 2: If parents enter into betrothals for their absent children, is it sufficient for the validity of the betrothal if the children, upon being informed, do not object? The first opinion states that it is not sufficient, and that it is necessary for the children themselves to ratify the betrothal with some other special sign, either expressed or tacit: thus Sanchez, book 2, chapter 23, number 47; Pontifical, book 2, chapter 14, number 14, and book 10, chapter 9, number 9; Ronayne, page 133, question 5, response 2; Escobedo, number 172, with Vega, Corduba, and Bossuet, chapter 3, number 488, with Molina, Fillon, Barbatus, Guttieri, etc. And they prove this from the same chapter, paragraph 6, which states: "And it is the same if the children, being absent at the time of the betrothal, and even ignorant of the betrothal, afterwards, upon becoming aware, ratified it tacitly or expressly." Therefore (they argue), it is rightly stated there that there is a difference between betrothals contracted with the children present, where silence is sufficient; and betrothals with absent children, where further ratification, either expressed or tacit, is required. The second opinion, on the other hand, states that it is sufficient that they remain silent and do not object; this is held by Bonaventure, question 4, paragraph 4, number 44; Sporer, number 194, with Concinius and Tamburello, page 4, number 14, with Paludanus, Henricus, and Salm. on marriage, chapter 4, paragraph 4, number 47, with Soto, Dionysius, etc. This opinion is also held by D. Th., book 4, question 27, article 2, paragraph 4, where it is said: "They (the betrothals) have strength

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in so far as those among whom they are contracted, having reached the proper age, do not object, and are understood to consent to what has been done by others." The reason is that, from the aforementioned text, it is sufficient for the children to ratify the betrothal expressly or tacitly; therefore, if they ratify it expressly, it is understood that they are consenting; if they ratify it tacitly, it is understood that they are not objecting; and therefore, the Pontifical states, "And it is the same," and in this context, it says "they ratified," because it is a matter that has already been completed by others. Both opinions are probable, but the second is more probable. However, Paludanus, number 15, with Concinius, rightly points out that it is not sufficient that the son, by chance, reactivates the betrothal that the parent has contracted.

[*Latin ed. p. 20*]

It must be ensured that the parties are free, and that there is no contradiction; moreover, it must be required that the parents, either personally or through a letter or messenger, inform the child of this certainty. 840. — "It is said 5. among the valid conditions: that is, those who have reached the age prescribed by law, and who are not prohibited by any impediment. Therefore, it is resolved: 4. When the words or signs are doubtful, in matters of conscience, one must adhere to the intention of the contracting parties, if this is known; but in external matters, one must adhere to the common understanding and meaning of the words, but in such a way that one should rather incline in favor of the marriage. See Duran, part 3, treatise 4, response 205. Bellesius, question 1, part 4.) (But it is more probable, as Viva says, to incline in favor of freedom.) 844. — "2. The words spoken in the present tense between minors who are not of age, when such a marriage is not legally permitted, have the force of a betrothal. The reason is the interpretative intention of the contracting parties, who, when an act is not valid, is valid in a better way than it is made; but betrothals are contained in their virtue in marriage. Layman, book 3, chapter 47. This doctrine is common among all; thus teach Sanchez, book 4, part 2, chapter 2, Pontius, book 42, chapter 5, number 4, Palafox, part 4, chapter 3, and Salmeron, on marriage, chapter 1, part 4, chapter 51, and others universally, from the same source. The same is stated in the section on betrothals of minors; provided that (it is understood) the minor does not expressly dissent internally. But does the same apply to adults, if the marriage is contracted clandestinely, that is, without a priest and witnesses? Layman, chapter 4, number 48, and the Council of Trent, session 24, chapter 4, number 430, affirm this. Also Avila, Henry, Ledo, etc., as cited by Salmeron, ibid., chapter 52. Escobedo considers it probable, number 428. The reason is, as stated in the aforementioned section, that an act which is not valid as it is performed, is nevertheless valid in the way in which it can be performed. But most commonly and probably, Sanchez, book 4, part 20, chapter 3, Barbado, collection 32, number 143,

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Bellesius, part 8, number 48, the Council, part 262, number 14, Escobedo, number 428, with Navarrete, Ledo, Manuel, and Palafox, book 4, chapter 42, and others, and Salmeron, chapter 54, with Becan, Duran, and Villalobos, who cite a declaration of the Cardinals, deny this. The reason is, because when an act is null, not already from the part of the contracting parties, but from its own part, it is contrary to good morals, and resists the law (as the Council of Trent, session 24, chapter 4, declares that a clandestine marriage is entirely invalid, and moreover, that the parties are entirely incapable of contracting in such a manner), then such an act does not create any obligation according to the law. It is not doubtful, chapter on Law. 842. — "3. For betrothal, it is not sufficient to say, 'I will not take anyone but you,' because these are merely negative words, and they may not imply anything. Bellesius, question 1, part 7, number 43. Layman, chapter 2, number 2, and Palafox, part 3, chapter 43, and Escobedo, number 43, correctly hold this view.

[*Latin ed. p. 21*]

448. Salm. c. 4, n. 44; Boss. c. 3, n. 213 et 224; Holzm. n. 148, cum Anacl., et communiter, ut asserit, ac Sanch. l. 4, d. 49, n. 5, cum Henr. Ang. Man.; Vega Ledesm., etc., contra Ang. Sylv., Adrian, Villal., etc., ib. n. 3. The reason is that such words, although they may imply that if one wishes to marry, they cannot take another, as Laym., Pal., Bon., Salm., ibid., n. 44, and others commonly observe; nevertheless, they do not, by themselves, imply that one is obligated to take that person. We say "by themselves," because, as Bon., Escob., and Salm., cited above, n. 44, state, it must be gathered from the circumstances that one truly intended to enter into a betrothal. However, Pont. l. 2, c. 10, n. 7; Viva qu. 4, art. 4, n. 2, with Perez, and others apud Boss., n. 221, most likely state that if the words are in the present tense, namely: "I want no one but you," then a betrothal is truly entered into. 843. — "2. It is not sufficient to enter into a betrothal by saying: 'I betroth you, if the Pope grants a dispensation.' Barb. et al., 40, with Dian., p. 3, t. 4, r. 290, contra Sanch., Conin., and Pont. Therefore, it is permissible for both contracting parties, both before and after the dispensation has been obtained from the Pope, to withdraw, even against the will of the other. However, if large expenses have been incurred as a result of the betrothal, the one who withdraws will be obligated to refund them." (However, such betrothals, once the condition is fulfilled, are more likely to be valid, according to the statements in n. 859. And in the meantime, although they may not be sufficient to create a public impediment to marriage, they do obligate one to seek a dispensation, if the Pope is accustomed to granting dispensations in such cases, otherwise not; see the statements in lib. 4, n. 650.)" 3. The giving of the ring and the exchange of gifts are not necessary; unless custom in the country dictates otherwise. The reason is that it can be done for other reasons. (So also Sanch. l. 4, d. 22, n. 2; Boss. c. 3, num. 420; Pal. p. 4, n.

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40; Conc. p. 262, n. 43, and others extensively.) "However, if the words of one precede, then the giving of the ring and the word, 'I accept,' effect a betrothal, or even a marriage, according to the nature of the promise, as Fill. teaches, because by accepting the ring, one tacitly consents; likewise, if, in a friendly discussion about marriage, the fiancé sends gifts and tokens, and the fiancée accepts them, Laym. l. 5, t. 480, c. 2." (Likewise, Pal. p. 4, n. 40; Escob. n. 464; Boss. c. 3, n. 423; Holz. n. 446; and Sanch. l. 4, d. 22, num. 3, with Abbat., Sylv., Angl., Tab., Arm., Cov., and others; and this even if (as these authors say) the word 'I accept' is not present, as Busemb. desires, for the mere acceptance is sufficient. If, however, the parents send a ring to the fiancée, it is not presumed that the son has entered into a betrothal, unless the ring was sent to her with his consent, as rightly held by Palaus, loc. cit., Sanch., n. 7, and Boss., n. 425, with Mol., Gutt., Menoch., etc.)" 4. Betrothals entered into under grave fear are invalid, even if confirmed by an oath: because an oath extorted by fear does not strengthen the contract; indeed, it probably does not even obligate, and therefore does not require relaxation.

[*Latin ed. p. 22*]

Sanchez, Barb. Diana, part 3, vol. 4, resolution 278. See above, vol. 4, 8, 2, chapter 2, 844. — Question: Whether betrothals contracted under grave and unjust fear are, by their very nature, invalid? The first opinion affirms this, and it is held by Sanchez, de matr., vol. 4, d. 21, n. 3; Pontius, vol. 4, c. 6, n. 42; Laym., vol. 3, tr. 4, c. 6, n. 3; Bon., p. 7, n. 6; Salm., de matr., c. 1, p. 5, n. 62, with Bec.; Cav.; Diana; and Aversa, and Boss., c. 42, n. 143, with Panorm.; Azor; Sa; Rodr., etc. They argue from the following: from the letter, c. 41, de despons. impub., where, when a certain girl had entered into betrothals with an oath, and afterward, being grieved (as the text says), and unwilling, she was brought to the house of the betrothed, having been compelled by the threats of her parents; therefore, the Pontiff declared her free from those betrothals. It may be objected that this girl did not enter into betrothals through fear, but rather, through fear, came to the house of the betrothed. For, generally, the Doctors, with the Glossary, hold that this girl was betrothed through fear; and Sanchez rightly says in the same text that this should certainly be assumed, otherwise the Pontiff would not have absolved her from the obligation of the betrothals. It is said to be through grave fear; for if it were slight, a different judgment would be given, as we shall see shortly in Question II. It is also said to be through unjust fear, because if it were just, the betrothals would be valid; then, indeed, the party who entered into them would be irrationally unwilling to enter into them if they did not want to, as Salm. rightly says, ibid., n. 66, according to what is said in n. 1057 (1). The second opinion, however, which is held by Coninck, d. 28, n. 7; Viva, q. 2, a. 8, n. 9; and Hurt., Dic. et Trull., apud Salm., ibid., n. 61, holds that betrothals contracted under grave fear can indeed

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be annulled by the fear itself, but are not, by their very nature, invalid; therefore, it says that if an oath has been given, it must be observed until it is relaxed. The reason is that all contracts, except for marriage itself, are, by their very nature, valid when entered into under fear, according to what is said in l. 4, n. 747. They respond to the text cited in dict. c. Ex Litteris, that there it was a matter of a girl who was entirely unwilling, and therefore her promise was declared invalid. Both opinions are probable, but the first seems more probable to me; for, speaking of contracts in general, I have held the opposite (as I said), namely, that contracts entered into under fear are, by their very nature, valid. However, with betrothals, a different reason arises; for in other contracts, when they are not null by their very nature, and there is no legal impediment, the one who was compelled by fear, unless he wishes to rescind the contract, can remain bound to fulfill it; but no one can be obligated to fulfill an act that is null by its very nature, and to which the law objects, such as marriage contracted during such fear; therefore, just as no one can be obligated to enter into such a marriage, so neither can he be obligated to its me- (1) "It is also said to be from external coercion, because if it were from internal coercion (e.g., if someone promised, » fearing that he would be forced to pay a debt or be thrown into prison), then » he is bound to the betrothals." From Hom. Ap, tr. 18, n. 8, Edit.

[*Latin ed. p. 23*]

The betrothal, or engagement, is considered a disposition, just as marriage is; for dispositions impart the same nature to actions, and therefore, many Doctors assert that betrothals follow the nature of marriage. Furthermore, it should be the same judgment for those who are connected, as is inferred from chapter Translato, concerning constitutions. Therefore, just as marriage is invalid due to fear, the same must be said of betrothals. From this, it is inferred that such betrothals create very little impediment to public decency.

Question II: Are betrothals validly contracted through slight fear, which gave cause for the contract? The first opinion denies this, and this is held by Nav. c. 22, n. 54; Less. c. ¶7, dub. 6, n. 46; Ronc. p. 132, qu. 4, r. 2; and Boss. c. 12, num. 288, with Rebell. Comit. Sylv. etc. The reason is that he who, through fear (even slight fear), extorts the consent of another, still inflicts an injury upon him, and is therefore unworthy to benefit from his own malice.

The second opinion, however, is more common and more probable, and affirms this, and is held by Bon. p. 9, n. 6; Pont. l. 4, c. 10, n. 5, with Med. Salm. de matr. c. 1, p. 5, n. 60; with Adversa, Croix l. 6, p. 3, n. 105; Viva de matr. q. 4, art. 3, n. 6; and Mazz. t. 4, p. 142. The reason is that it is not considered that the other person has inflicted a true injury upon you, since you could easily have repelled that fear; therefore, if you did not repel it,

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you are considered to have spontaneously willed to suffer such an injury.

Question III: Can he who contracted a betrothal through slight fear, which gave cause for the contract, rescind it in conscience? The first opinion denies this, and this is held by Pon. l. 4, c. 10, n. 6 and 10; and Viva q. 4, art. 3, n. 6, with Perez, Med. etc. And the reason is the same as that given above for the second opinion in the preceding question. This opinion is sufficiently probable, but the more common opinion, and the one that seems more probable, is the following.

The second opinion affirms this, and is held by Laym. lib. 3, tr. 4, c. 6, n. 4; Sanch. l. 4, d. 49, n. 6; Wigandt tr. 3, n. 49; Bon. p. 9, n. 8; Salm. de matr. c. 1, p. 5, n. 60; Mazzotta t. 4, p. 142; Croix n. 105, with Becan and Lugo de contract. d. 22, n. 438, with Azor, Reg. Lop. Led. etc.; and Viva q. 4, art. 3, n. 6 considers it probable. The reason is that, when fear gives cause for the contract, so that it would not have been entered into otherwise, the one who instilled the fear is bound to rescind the contract; therefore, just as he is bound to release the fidelity unjustly extorted through such fear, so too, the one who suffered the fear can revoke the fidelity given. This would apply even more if he had apprehended that fear as grave, even though it was slight in itself, because in that case, he could not easily have repelled such fear, as he could have when he knew it to be slight.

What, however, should be said if the fear was just, or from within? See what is to be said in number 1053.

[*Latin ed. p. 24*]

DOUBT II. What is the nature and extent of the obligation of betrothal? 845 Betrothal creates a grave obligation. But does it obligate one to enter into marriage immediately? 846 Can a judge compel those who are unwilling to marry? 847 Is the fornication of the betrothed, whether by the woman or the man with another, of a different kind? A fictitious betrothal does not obligate to marriage, unless the act of consummation is extorted from a virgin. 848 If someone has contracted betrothal with two people, and then consummates the betrothal with the second, whom should they marry? 849 Concerning the marriage of children without the knowledge or consent of their parents. Are such marriages valid? Q. I. In what way, and to what extent, do children sin when they marry without the knowledge or consent of their parents? What if the betrothal has been sworn? What if the betrothed has deflowered a virgin after the betrothal? Are prelates obligated to prevent such marriages? For what reasons may children be excused from marrying without the consent of their parents? 850 Question II. Is a son obligated to obey his father who commands him to marry? 851 Question III. Does a notable disparity of condition or status between the contracting parties invalidate the betrothal? 852 The one who breaks the betrothal loses the dowry, etc. Note I. What if a woman promises something to a man in order to be married to him, and conversely? 853 Note II. Concerning the

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penalty imposed on the one who breaks the betrothal. Q. I. Is it permissible to add a penalty to the one who breaks the betrothal unjustly? Q. II. Is the one who justly breaks the betrothal obligated to pay the promised penalty under oath? Q. III. Once the penalty has been paid, is the recipient obligated to return it? Q. IV. What if a legacy is left to a girl so that she may marry someone, and she marries someone else? Q. V. What if a legacy is left so that she may not marry, and she does marry? 854 Are embraces and kisses permitted between betrothed? 845. — I ANSWER: 4. They obligate one to enter into marriage under mortal sin: "(As is commonly held by all, see Salm. de matr. c. 4. p. 7. n. 84; and it is clear from c. Ex litteris de sponsal. Ratio, because, although a simple promise, according to a probable opinion, does not create a grave obligation, it is otherwise with a mutual promise, which constitutes a perfect contract, obligating both parties.)" However, if no time limit is specified, it is sufficient if the one who promised fulfills it when required by the other party, or according to the custom of the region. The reason for the former is clear from the nature of a burdensome contract, in a serious matter. The reason for the latter is that it is common to all debts. Sanch. l. 4. d. 28. Conin. d. 22. dub. 4. apud Dian. p. 3. t. 4. r. 245. Pont. ibid. however, wants one to be obligated immediately after the contract. Therefore, the question is, whether one who has contracted betrothal without a specified time for entering into marriage is obligated to do so immediately as soon as it is convenient. The first opinion says no, and that one is only obligated when the other party requires it; thus Bus. as above, Sanch. l. 4. d. 28. n. 2. Nav. c. 47. n. 79. Holz. n. 477. with Abb. and Piring. and Escob n. 178. with Pal.

[*Latin ed. p. 25*]

Sylv. etc. The reasoning is as follows, because it is stated in the law *De Debitoribus Praesentes*, chapter on Pledges, where it says: "Debtors must first be summoned by notification." However, the second opinion is more accurate, and this is held by Pontius, law 42, chapter 6, number 1; Pal. page 7, number 2; Conc. page 266, number 26; Ronc. page 134, question 2, response 2; and Salm. on Matrimony, chapter 4, page 7, number 85, with the Council of Trent and Aversa. The reasoning is as follows, because it is expressly stated in the law *In Omnibus*, sections on civil law, where it says: "In all obligations in which a date is not specified, the debt is due on the present day." And in the law *Eum qui*, section "How often," sections on verbal obligations, it says: "What is due without a specified term is due immediately." However, it is responded to the opposing text that it is only established for debtors who have given pledges, which are not legally and justly to be taken from creditors unless the debtors are first warned. But it should be noted that the Doctors of the first opinion (such as Sanch. and others) say that if one party, through forgetfulness, fear, modesty, or a similar cause, does not request [the marriage], as is especially the case

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with women, then the fiancé is obligated to contract the marriage on his own behalf without being asked, if he can do so conveniently. Conversely, the Doctors of the second opinion (such as Pal. in the aforementioned law and Salm. cited above, number 85, with the Council, etc.) say that if one party, when able to request it conveniently, remains silent, then that party appears to consent to a delay; and thus, these opinions are sufficiently reconciled. What if a fixed term has been established in the betrothal for entering into marriage? See the statements in numbers 867 and 846. — "4. One who is reluctant can be compelled to marry even by a judge" through censures; however, this is rarely advisable due to the risk of an unhappy outcome. It is certain, as we have said, that in the forum of conscience, one who is unwilling to fulfill the betrothal without a just cause gravely sins. It is doubtful whether a judge can compel one who is unwilling? Some affirm, others deny, unless the promise has been confirmed by an oath. Others deny it even if an oath has been given. And all these opinions are considered probable by Salm. on Matrimony, chapter 4, page 7, number 88. However, it is more true and commonly said by Pal. page 8, number 2; Conc. page 266, number 27; Tamb. chapter 4, section 4, number 40; Holz. number 478; Pont. law 42, chapter 6, number 2; Salm. ibid. number 89, with the Council of Becan; Dic.; and Sanch. book 4, title 29, number 4, with St. Bonaventure, St. Antoninus, Nav. Palud., and countless others, that if quarrels or scandals are feared from such a marriage, the judge should not compel the unwilling party to enter into it; otherwise, if scandals are not feared. It is also expressly stated in chapter 40 on betrothals, where it says: "Ecclesiastical censure compels, unless a reasonable cause prevents." And so, the Holy See has ruled that coercion should be avoided if there is a probable cause; otherwise, it has sanctioned other actions, as reported by Father Zacharias in Croica, law 6, page 3, at number 62. Busemb. and Tamb. rightly point out that it is rarely advisable to compel the parties to enter into such a marriage; and Father Concina agrees, saying that it is always less bad for the innocent party to abstain from such a marriage. Also, Tamb. rightly points out that if the reluctant party has been excommunicated and persists, the judge must...

[*Latin ed. p. 26*]

She should be absolved, because no progress is to be hoped for at that time; and conversely, if such a marriage were contracted, a bad outcome should be feared. Salm. ibid. n. 92, along with Sanch. Pont. Pal. etc., also note that if there are betrothal agreements, both the ecclesiastical and the secular judge have the right to compel the betrothed to marry. 2. If the judge, according to what is alleged and proven, compels marriage, even though, in reality, coercion is unjust, the marriage is valid. Sanch. and M. Perez, against Texed. apud Diana, p. 9, t. 8, r. 26, 847. — 3. Fornication in the case of a betrothed woman is a circumstance that must be mentioned in

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confession, because it changes the nature of the act and constitutes an injustice, which is grave for the betrothed woman, and is therefore considered mortal, as if one were to noticeably corrupt something promised to another: although the betrothed man is not considered to do this by fornicating, since fornication is not considered to be of such great consequence in a man, unless something else is added. Sanch. l. 4, dist. 2. Coninck, Fagund. Fill. etc. probably against Laym. Azor, etc. See Lugo d. 16, n. 476. Regarding this question, there is a triple probable opinion. The first opinion states that fornication involves a different kind of sin for both the betrothed woman and the betrothed man; and so hold Pal. p. 7, n. 5. Laym. cap. 4, n. 6. Holzm. n. 184. Azor, apud Fill. cap. 2, num. 53. and Salm. de matr. cum Con. Dicast. and others c. 4, p. 4, n. 44, because an injury is inflicted on the law, which one has acquired concerning the thing or the body of the other. The second opinion states that only the betrothed woman sins in a different way, but not the betrothed man, who seems to inflict a minor injury on the betrothed woman, thus Sanch. l. 4, d. 2, n. 6. Bon. q. 4, p. 40, n. 62; also Fill. and others apud Salm. ibid. n. 9. The third opinion, which is still not entirely probable, held by Pontius l. 21, c. 6, n. 8. and Trull. Covar. Diana, and Vivald. apud Salm. ibid. n. 7. and is considered probable by Sanch. n. 7. Laym. c. 4, n. 6. Lugo de pæn. d. 16, n. 47, with Led. and Megala, Salm. l. c. and Elbel n. 59, states that neither commits an injustice by fornicating, because neither of the betrothed has acquired a right in the body of the other, since neither has yet surrendered their body. Therefore, this applies equally to both the betrothed man and the betrothed woman; if she were to commit an injustice by fornicating, she could not then contract marriage with the betrothed man, unless she revealed a hidden defect in her body, because there would then be an inequality; but she is not obligated to do so, as Pontius says with others (see the aforementioned n. 865, ad II): therefore, there is equality, and consequently, she does not commit an injustice. 4. He who, with a feigned intention, promises marriage, is not, in himself, obligated to marry, although he must make amends for the damage caused. I said "in himself," because if, after making the promise, he led the girl to copulate, he is obligated to marry her. Bonac. l. c. p. 2. He makes an exception if the girl were of a much lower condition, for example, in terms of nobility or wealth, because in that case...

[*Latin ed. p. 27*]

It is not necessary to compel a man to marry, for example, a nobleman who has taken a wife from among the common people, especially if the latter is aware of the disparity in status, or if she has, rather than being deceived, willingly entered into the union; in which case, she is not to be endowed with a dowry. However, if the woman is unaware of the inequality of status, or if the man has promised marriage sincerely, and not falsely, then the matter is different. Thus, Bonaventure, Qu. 4, p. 3, n. 7 and follow-

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ing, citing Vasquez, Mol. d. 406; Sanchez, l. 4, d. 10; see Lessius, l. 2, c. 10, d. 3; Layman, c. 4, n. 40; and M. Pereira, d. 2, s. 3. (Regarding all of these matters, see what we have noted above concerning restitution, l. 4, n. 642.) 848.

5. Marriages entered into after a prior promise, even if accompanied by oaths or consummation, are invalid, according to Sanchez and Villalobos. However, Concilium Tridentinum and Pontus, with Diana, p. 3, t. 4, r. 210, hold the contrary view. Nevertheless, a marriage contracted after a prior promise with another is valid, although it may be unjust. Bonaventure, p. 5 and 7; Layman, c. 4, n. 5. It is certain that if the second wife is aware of the prior promises, the marriage with the first must be maintained, because the second was not deceived, but rather willingly entered into the situation; thus, commonly, Bossius, c. 3, n. 90; Salm, de matr., c. 2, p. 3, n. 42; Viva, q. 2, art. 7, n. 3; Holzm, n. 217, and others. It is doubtful if she is unaware. The first opinion holds that the man is obligated to marry the second, if he has had intercourse with her; thus, Palafox, p. 22, n. 6; Viva, l.c.; Pontus, l. 12, c. 14, n. 4, with Major; Bossius, l.c., with Diana, and Salm, ibid., n. 44, with Conciliarius and Leander. The reason is that, according to the passage from Justinian, those who give their hand in marriage, from the time that, through intercourse, a marital bond is formed, the promises pass into marriage; although this marriage no longer subsists today according to the law of the Council of Trent, Session 24, c. 4, nevertheless, that passage well establishes the right acquired by the second woman through the transmission of the body, which formerly constituted marriage; furthermore, when one acts to acquire a benefit, and the other to avoid a loss, the latter should be favored rather than the former. The second opinion, which is more common and more probable, holds that the man is obligated to marry the first, even if he has had intercourse with the second, thus Sanchez, l. 4, d. 49, n. 5, with Ledo, Henriquez, Manes, and Lopus; also, Navarrus, cap. 22, num. 26; Bonaventure, p. 5, n. 7; Roncaglia, p. 370, q. 6, r. 2; Elbel, p. 370, n. 47, with the common opinion, as asserted by Escobari, n. 245; Layman, c. 4, n. 5, with Soto and Rodriguez; Holzm, n. 447, with Mastrius and Anaclasius, and Crocius, n. 73, with Hurtado and Aversa. The reason is that the promise made to the second wife is always null, since it is made concerning an illicit thing, when a promise has been made to the first wife; nor does the injury caused to the first woman deprive her of this right. And this is true, even if the second promise has been confirmed by an oath, as say Holzm, n. 446; Sanchez, dist. 50, n. 248; Layman, l.c., and others; because an oath cannot be a bond of iniquity. Nor does the first reason of the opposing opinion invalidate the second, for that passage (as rightly say Navarrus, Sanchez, l.c., with Soto, and Ledo) should be understood to refer

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to intercourse had with marital affection.

[*Latin ed. p. 28*]

DOUBT II. What is the nature and extent of the obligation of betrothal? 845 Betrothal creates a grave obligation. But does it obligate one to enter into marriage immediately? 846 Can a judge compel those who are unwilling to marry? 847 Is the fornication of a betrothed woman or man with another person of a different kind? If a promise is made in jest, is one bound to marry, unless the virgin has been violated by the man? 848 If someone has contracted betrothal with two people, and then has intercourse with the second, which one should they marry? 849 Concerning the marriage of children by ignorant parents. Are such marriages valid? Q. I. In what way, and to what extent, do children sin when they marry without the knowledge or consent of their parents? What if the betrothal has been sworn? What if the betrothed man has defiled the woman after the betrothal? Are prelates obligated to prevent such marriages? For what reasons may children be excused from marrying without the consent of their parents? 850 Question II. Is a son obligated to obey his father who commands him to marry? 851 Question III. Does a notable disparity in condition or status between those entering into marriage invalidate the betrothal? 852 The one who breaks the betrothal loses the dowry, etc. Note I. What if a woman promises something to a man, in order that he may marry her, and what conversely? 853 Note II. Concerning the penalty imposed on the one who breaks the betrothal. Q. I. Is it permissible to add a penalty to the one who unjustly breaks the betrothal? Q. II. Is the one who breaks the betrothal justly obligated to pay the promised penalty under oath? Q. III. Once the penalty has been paid, is the recipient obligated to return it? Q. IV. What if a legacy is left to a girl so that she may marry someone, and she marries someone else? Q. V. What if a legacy is left so that she may not marry, and she does marry? 855 Is it permissible for betrothed persons to touch and kiss each other? 845. — I ANSWER 4. They are obligated to enter into marriage under a mortal sin: • (This applies generally to all, see Salm. de matr. c. 4. p. 7. n. 84; and it is clear from c. Ex litteris de sponsal. Ratio, because, although a simple promise, according to a probable opinion, does not create a grave obligation, it is otherwise with a mutual promise, which constitutes a perfect contract, binding on both sides.) • However, if no time limit has been set, it is sufficient if the one who promised fulfills it when required by the other party, or according to the custom of the region. The reason for the former is evident from the nature of a burdensome contract, in a serious matter. The reason for the latter is that it is common to all debts. Sanch. l. 4. d. 28. Conin. d. 22. dub. 4. apud Dian. p. 3. t. 4. r. 245. Pont. ibid. however, wants to be obligated immediately after the contract. Therefore, the question is, whether one who has contracted betrothal without a fixed time for marriage, is obligated to do so immediately, and whether it can be

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done conveniently. The first opinion says no, and that one is only bound when the other party requires it; thus Bus. as above, Sanch. l. 4. d. 28. n. 2. Nav. c. 17. n. 79. Holz. n. 477. with Abb. and Piring. and Escob n. 478. with Pal.

[*Latin ed. p. 29*]

Sylv. etc. The reasoning is as follows, because it is stated in the book *De Debitoribus Præsentes*, chapter on Pledges, that "Debtors must first be notified of the intention to seize their goods." However, the second opinion, which is more accurate, states otherwise, and this is held by Pontius, book 42, chapter 6, paragraph 4; Palatinus, page 7, paragraph 2; Council of Trent, page 266, paragraph 26; Roncaglia, page 134, question 2, response 2; and Salm, on Matrimony, chapter 4, page 7, paragraph 85, with the opinions of Led and Aversa. The reasoning is as follows, because it is expressly stated in the book *In Omnibus*, section on legal regulations, that "In all obligations in which a specific date is not mentioned, payment is due on the present day." And in the book *Eum qui*, section "How often," section on verbal obligations, it states: "What is due without a specified term is due immediately." However, it is argued against this text that it only applies to debtors who have provided pledges that are not legally and justly to be taken from the creditors unless the debtors are first warned. It should be noted that the Doctors of the first opinion (such as Sanchius and others) state that if one party, through forgetfulness, fear, modesty, or a similar cause, does not request [the marriage], as is especially the case with betrothals, then the betrothed is obligated to offer the marriage without being asked, if he can do so conveniently. Conversely, the Doctors of the second opinion (such as Palatinus, book cited, and Salm, cited, paragraph 85, with the opinions of Led and Aversa) state that if one party, when able to request it conveniently, remains silent, then that party appears to consent to a delay; and thus, these two opinions are sufficiently reconciled. However, what if a specific term has been set in the betrothal for the celebration of the marriage? See the statements in paragraphs 867, 846, and 4. A betrothed person can be compelled to marry even by a judge through censures; however, this is rarely advisable due to the risk of an unhappy outcome. It is certain, as we have said, that in the forum of conscience, a person who refuses to fulfill the betrothal without a just cause gravely sins. It is doubtful whether a judge can compel a reluctant person? Some affirm, others deny, unless the promise has been confirmed by an oath. Others deny, even if an oath is present. All of these opinions are considered probable by Salm, on Matrimony, chapter 4, page 7, paragraph 88. However, it is more accurately and commonly stated by Palatinus, page 8, paragraph 2; Council of Trent, page 266, paragraph 27; Tamburelli, chapter 4, section 4, paragraph 40; Holzapfel, paragraph 478; Pontius, book 42, chapter 6, paragraph 2; Salm, ibid., paragraph 89, with the opinions of Becanus, and others; and

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Sanchius, book 4, title 29, number 4, with St. Bonaventure, St. Antoninus, Navar, and many others, that if quarrels or scandals are feared from such a marriage, the judge should not compel the unwilling party to enter into it; otherwise, if scandals are not feared. And this is expressly stated in chapter 40 on betrothals, where it says: "Ecclesiastical censure compels, unless a reasonable cause prevents it." And thus, the Holy See has ruled that coercion should be avoided if there is a probable cause; otherwise, it has ruled otherwise, as reported by Father Zacharias in Croicae, book 6, page 3, at number 62. Busembach and Tamburelli rightly point out that it is rarely advisable to compel the parties to enter into such a marriage; and Concina agrees, saying that it is always less bad for the innocent party to abstain from such a marriage. Tamburelli also rightly points out that if the reluctant party has been excommunicated and persists, the judge must...

[*Latin ed. p. 30*]

She should be absolved, because no progress is to be hoped for at that time; and conversely, if such a marriage were contracted, a bad outcome should be feared. Salm. ibid. n. 92, along with Sanch. Pont. Pal. etc., also note that if there are betrothal agreements, both the ecclesiastical and the secular judge have the right to compel the betrothed to marry. 2. If the judge, according to what is alleged and proven, compels marriage, even if, in reality, coercion is unjust, the marriage is valid. Sanch. and M. Perez, against Texed. apud Diana, p. 9, t. 8, r. 26, 847. ▪ 3. Fornication in the context of betrothal is a circumstance that must be mentioned in confession, because it changes the nature of the act and constitutes an injustice, which is grave for the betrothed, and is therefore considered mortal, as if one were to noticeably corrupt something promised to the other: however, the betrothed is not considered to do this by fornicating, since fornication in a man is not considered to be of such magnitude, unless something else is added. Sanch. l. 4, dist. 2. Coninck, Fagund. Fill. etc. probably against Laym. Azor, etc. See Lugo d. 16, n. 476. Regarding this question, there is a triple probable opinion. The first opinion states that both the betrothed woman and the betrothed man commit a sin of a different nature; and so hold Pal. p. 7, n. 5. Laym. cap. 4, n. 6. Holzm. n. 184. Azor, apud Fill. cap. 2, num. 53. and Salm. de matr. cum Con. Dicast. and others c. 4, p. 4, n. 44, because an injury is inflicted on the law, which one has acquired concerning the other's person or body. The second opinion states that only the betrothed woman commits a sin of a different nature, but not the betrothed man, who, by fornicating, seems to inflict a slight injury on the betrothed, thus Sanch. l. 4, d. 2, n. 6. Bon. q. 4, p. 40, n. 62; also Fill. and others apud Salm. ibid. n. 9. Finally, a third opinion, which is still quite probable, held by Pontius l. 21, c. 6, n. 8. and Trull. Covar. Diana, and Vivald. apud Salm. ibid. n. 7. and considered probable by Sanch. n. 7. Laym. c. 4, n. 6. Lugo de pæn. d. 46, n. 47. with Led. and Megala, Salm. l. c. and Elbel n. 59, states that neither commits

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an injustice by fornicating, because neither of the betrothed has acquired a right in the other's body, since neither has yet surrendered their own body. Therefore, this applies equally to both the betrothed man and the betrothed woman; if she were to commit an injustice by fornicating, she could not then contract marriage with the betrothed man, unless she revealed a hidden defect in her body, because then there would be inequality; but she is not obliged to do so, as Pontius says with others (see the aforementioned n. 865, ad II): therefore, there is equality, and consequently, she does not commit an injustice. 4. He who, with a feigned intention, promises marriage, is not, in his own words, obligated to marry, although he must compensate for the damage caused. I said "in his own words," because if, after making the promise, he led the girl to copulate, he is obligated to marry her. Bonac. l. c. p. 2. He makes an exception if the girl were of a much lower condition, e.g., in terms of nobility or wealth, because then...

[*Latin ed. p. 31*]

It is not necessary to provide a dowry, for example, to a noblewoman who is the daughter of a farmer, especially if she is of a different social status, or condition, because she would rather be deceived than not deceived; therefore, in such a case, she is not obliged to provide a dowry. However, if she is unaware of the inequality of status, or if he promises marriage sincerely, and not falsely, then it is different. Thus, Bonaventure, Question 4, page 8, paragraph 7 and following, citing Vasquez, Mollerus, d. 406; Sanchez, book 4, d. 10; Lessius, book 2, chapter 10, d. 3; Layman, chapter 4, paragraph 10; and M. Pereira, d. 2, s. 3. (See all of these, as we have noted previously, in book 4, paragraph 642.) 848. — "5. Marriages entered into after a prior promise, even if that promise was made under oath, or even if consummation has occurred, are invalid, according to Sanchez and Villalobos. However, Concilium Tridentinum and Pontus, with Diana, page 3, book 4, part 210, hold the contrary view. Nevertheless, a marriage contracted after a prior promise is valid, although it may be unjust. Bonaventure, page 5 and 7; Layman, chapter 4, paragraph 5. It is certain that if the second bride is of a status inferior to that of the prior promises, the marriage must be contracted with the first, because then the second was not deceived, but rather she herself willed to be deceived; thus, commonly, Bossius, chapter 3, paragraph 90; Salmeron, de matrimonio, chapter 2, page 3, paragraph 42; Viva, question 2, article 7, paragraph 3; Holzaeus, paragraph 217, and others, generally. It is doubtful if she was unaware. The first opinion states that the man is obligated to marry the second, if he has had intercourse with her; thus, Palafox, page 22, paragraph 6; Viva, op. cit.; Pontus, book 42, chapter 14, paragraph 4, with Major; Bossius, op. cit., with Diana, and Salmeron, book, paragraph 44, with Concilii Recepta and Leander. The reason is that, according to chapter 15, those who have made a promise are considered to have entered into marriage by inter-

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course done with marital intent; although this marriage no longer exists according to the new law of the Council of Trent, session 24, chapter 4, nevertheless, that text well establishes the right acquired by the second woman through the transmission of the body, which formerly constituted marriage; furthermore, when one acts to acquire a profit, and the other to avoid a loss, the latter should be favored rather than the former. The second opinion, which is more common and more probable, states that the man is obligated to marry the first, even if there has been intercourse with the second, thus, Sanchez, book 1, d. 49, paragraph 5, with Ledo; Henriques, Manual; and Lopus; also, Navarret, chapter 22, number 26; Bonaventure, page 5, paragraph 7; Roncaglia, page 370, question 6, rule 2; Elbel, page 370, paragraph 17, with Escobar, paragraph 245; Layman, chapter 4, paragraph 5, with Soto and Rodriguez; Holzaeus, paragraph 447, with Mastrius and Anaclasius, and Croix, paragraph 73, with Hurtado and Aversa. The reason is that the promise made to the second woman is always null and void, as it is made concerning an illicit thing, since a promise has been made to the first woman; nor does any injustice done to one deprive the other of his right. And this, even if the second promise has been confirmed by an oath, as they say, Holzaeus, paragraph 446; Sanchez, dist. 50, paragraph 248; Layman, op. cit., and others; because an oath cannot be a bond of iniquity. Nor does the first reason of the opposing opinion invalidate the second, for that text (as Navarret and Sanchez, op. cit., with Soto and Ledo, rightly say) should be understood to speak of intercourse done with marital intent.

[*Latin ed. p. 32*]

It is not, however, a matter of having a carnal affection, as would be the case in our situation. Nor is the second argument valid, for here we are not dealing with a lucrative contract, but rather a burdensome one, which is mutually obligatory. Nevertheless, Sporer, loc. cit., Sanch. n. 6, Elbel, p. 374, n. 49, and Bonac. with Reg. and Mol. and Croia with Aversa, and Rone, ll. cc., state that, by reason of equity, the first spouse should not be forced to relinquish her right, if the second were to suffer a grave injury from defilement, because charity obliges us to endure some harm, lest our neighbor suffer a very great one; hence, Henriq., apud Sanch., l. c., and Croia with others, state that, in such a case, the judge can rightly compel the first spouse to marry the second. But Holzm., d. n. 447, with Anacl., Gutt., and Pichler, do not consider that she is bound to do so, because the second must bear the blame for her own offense, which causes such an injury. 849. — • 6. Children who contract betrothals without the knowledge of their parents, even with those of unequal condition, e.g., a nobleman with a commoner, are bound by them, even though they may have sinned; nor can they be prevented by their parents, provided they keep the promise they have made. Laym., l. c., n. 42, from Th. etc., unless a great scandal is feared. Dian., part. 9, t. 7, resol. 74, from Mol., Sanch., etc. It is certain that

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marriages contracted by children without the consent of their parents are valid, contrary to Luther, Bucer, and Erasmus (apud Bellarm., de matr., c. 49), who asserted that they were invalid; this is evident from the Tridentine Council, session 24, canon 4, de Ref., where it is stated: "And those who falsely assert that marriages contracted by children without the consent of their parents are invalid, and that parents can make such marriages valid or invalid, are condemned." Therefore, the opinion of Pont., l. 2, c. 4, n. 5, and Tourn., Præl. theol. de matrim., quæst. 6, art. 3, concl. 4, that formerly such marriages, begun without the consent of their parents, were invalid, does not seem sufficiently probable; for this is contradicted by the common opinion of all Scholastics, as Pont. himself admits, and it seems certain from the text of the Council itself. From this, Laym., c. 4, n. 14, Spor., c. 5, n. 202, and Holzm., n. 467, with Anacl. and others, commonly infer that, just as such a marriage is valid, so too are betrothals. Holz. also states in l. 7, ff. de sponsal., that, just as the consent of the parents seems to be required for betrothals, so it is required for marriage, according to l. If, as you propose, 7, c. de nupt. He responds that, although the law prohibits such betrothals, it does not invalidate them. This concerns validity; but the question arises: In what way, and when, and to what extent do children sin when they contract marriages without the consent of their parents? Four opinions exist. The first opinion, and indeed the more common one, teaches that they always sin mortally if they enter into marriage, whether with the parents' disapproval or against their will; thus, Pontius, l. 2, c. 4, n. 26, Mol., t. 4, tr. 2, d. 476, Sylvius, Suppl. q. 47, art. 6, concl. 4, Nav., c. 14, n. 45, Petrocor., t. 4, p. 413.

[*Latin ed. p. 33*]

Abelly, page 205. Roneag, page 269, question 3. Council documents, page 284, number 4. A dissertation defending this view was published by the Most Reverend Francis Muscettola, Bishop of Rossano, to which the most learned canon of Naples, Alexius Mazzochius, has recently added learned annotations, where the following are cited in support of the same view: Albertus Magnus, Estius, Merbes, Megal, Fagius, Naldus, Turrecrema, Bellarmine, Amicus, Mastrini, Martinus, Leander, Marchant, Vidal, Platel, Isambard Genet, Natalis Alexander Juenin, Cabassut, and others; but it should be noted that, of these, several (as observed by Bellarmine, Albertus Magnus, Estius, Turrecrema, Juenin, and Cabassut) state that these marriages are illicit (which all Doctors concede), but they do not explain whether they are subject to grave or light guilt. This view is proven as follows: 1. From chapter "Aliter, causa 30, question 5," where it is read that the decree attributed to Pope Evaristus states that not marriages, but adulteries, are those that are contracted without the consent of the parents, and without previous prayers, without the blessing of a priest, and without the presence of witnesses, etc. From

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chapter "Honoratur 32," it is said that one does not choose a husband for virginity, but awaits the judgment of the parents. Also, it is proven from the decree of the Council of Trent, session 24, chapter 1, where, when speaking of clandestine marriages, and also of marriages contracted by children without the consent of their parents, it is said: "The Holy Church of God has always detested and prohibited these for most just reasons." 2. From civil law, which declares marriages contracted without the consent of the parents to be invalid, as is expressed in book 2, title 1, chapter 1, of the "Institutes on Marriage," and elsewhere: "If there are children, they must have the consent of their parents, for both civil and natural reason suggest that this should be done. And if anyone should act contrary to this, neither a man, nor a woman, nor a marriage, nor a matrimony, nor a dowry is understood." And although these laws are corrected by canon law, as is stated in chapter "Tua, de sponsalibus," and in chapter "Cum causa, de raptoribus," and in the decree of the Council of Trent, session 24, chapter 4, nevertheless, from them, the deformity of such marriages is perceived by the very light of natural reason. 3. By reason, because from such marriages arise grave inconveniences and scandals; because this is required by the obedience due to parents; and because those who are gravely offended are the parents themselves, if their children, without their knowledge or against their will, contract marriage. The second opinion states that children are indeed obligated to seek the advice of their parents, but not to follow it; thus, Sanchez, book 4, title 23, number 10; Layman, chapter 2, number 14; Barbatus, in the decree of the Council of Trent, session 24, chapter 1, number 2; Viva, on marriage, question 4, article 2, number 5; Bonaventure, ibid., title, question 4, page 17, number 25; and Vasquez, Fillon, Villanova, etc., apud Bossuet, on marriage, chapter 14, number 84. The first part is proven because it is considered a grave offense to not consult with parents in a matter so important, to whom it is incumbent to look after the good of their children; for a father, who possesses greater prudence and experience, can reveal things to his son, by which he may change his will. The second part (which, besides the aforementioned authors, is also held by Tolet, Burgh, etc., apud Croix, book 6, page 3, number 570, and Viguer).

[*Latin ed. p. 34*]

Led. and Riminald. in Sano, l.c., and are seen there explicitly also holding this view. Lupus and Covar, at least, state there that it is not a mortal sin (Victor and Henry). I say, this second part is proven from D. Th. 2.2. qu. 104. art. 5, where it is said: "Neither are servants bound to obey their lords, nor children their parents, in contracting marriage, or in observing chastity." And although the Doctor does not speak there of a son contracting marriage without the consent of his father, but of a father compelling his son to marriage, the reason given there is general, and for both cases it

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concludes, saying: "But a man is bound to obey another man in those things which are to be done outwardly by the body; in which things, however, according to those things which pertain to the nature of the body, a man is not bound to obey another man, but only God; because all men are equal by nature, for example, in those things which pertain to the sustenance of the body and the generation of offspring. Therefore, neither are servants..." and so on as above. The intrinsic foundation of this opinion is that, since by marriage a man is bound to perpetual servitude, it is necessary that he be entirely free in contracting it. And although it is according to the law of nature that children should give obedience to their parents, nevertheless, it is also according to the natural and more important law that all manner of freedom should be preserved in marriages. Nor do the texts cited above, which ask for the consent of parents, stand in the way; for they only prove that it is required for decency and honor, and not by command, as Salm. de matr. c. 6. p. 2. n. 24, Boss. c. 44. n. 87, and Sanch. l.c. with Host. Suar. etc. from Gloss. in e. fin. caus. 30. q. 2. v. Parentum, say: "This refers only to honor." But the text from Trent is not certainly referring to marriages contracted without the consent of parents, because those words of God are those which that Church has always detested; rather, they can be referred to clandestine marriages, as it seems to be gathered from the subsequent words, where it is said that, since impious men also contracted those prohibited marriages, therefore they are declared invalid; therefore, Trent declares that the Church has only detested those marriages which it has prohibited, and now the Council makes them valid. For the same reason, as above, the civil laws stand in the way even less; which, however (as Cujacius and Gothofred. ad l. Filius ff. de ritu nupt. and Holzm. n. 168. and Gonzal. in d. c. Tua n. 8. think), did not invalidate such marriages, but only rendered them civilly invalid; that is, with regard to the effects of the civil contract, as Louis XIII declared in the kingdom of France, in Tourn. Præl. theol. de matr. quæst. 6. art. 3. versus fin. The third opinion says that if a son contracts marriage, whether without the knowledge of his parents, or against their will, he does indeed contract illicitly, but, speaking by itself, he does not sin mortally, but only venially; thus Palaus p. 42. n. 44, Boss. c. 44. n. 87, Elbel p. 368. n. 9, Tamb. Dec. l. 5. c. 2. §. 3. n. 6, Renzi p. 204. q. 2, Holzm. n. 172. with Pichler, Spor. n. 206. with Henr. Led. and Gob. and Salm. de matr. c. 6. p. 2.

[*Latin ed. p. 35*]

n. 22. Concerning the matter with Covarrubias, Victor, Aversa, Ratio, Dicet, and Henricus: It is true that children are obligated to show obedience to their parents, namely, to consult them in a matter so grave; however, this obligation cannot be considered serious when the children are not bound to follow the parents' advice. Furthermore, they can, through themselves or through other prudent men, sufficiently ascertain what may occur in

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this matter. Conversely, parents cannot reasonably be considered gravely offended if their advice is not sought in a matter that absolutely depends on the free choice of the children. If, therefore, children are not obligated (at least in a serious way) to follow the advice of their parents, as the Doctors of the Second Opinion concede, there is no reason why they should be seriously obligated to consult them; all the more so, because parents are more likely to feel offended if their children enter into unions against their will after advice has been given, than if they are not consulted at all. This is especially true if the son judges that the parents would not seriously object to the marriage if they were aware of it. Indeed, the son commits very little sin if he believes that the parents would freely consent to it, or if they would unjustly prevent it if they were consulted, as Barbarius states in the aforementioned passage, along with Conciliarius Sanchius, Vasquez, and Bossuet, chapter 14, paragraph 82, along with Bellarmine, Navarrius, Sayr, Guttieri, and others. This is sufficiently proven from the same Council of Trent, decree, chapter 4, session 24, where it is stated that marriage can be contracted even without the required announcements, if there is a probable suspicion that the marriage could be maliciously obstructed. However, the Doctors of both the Second and Third Opinions, such as Sanchius, number 44; Palafox, number 9; Holzapfel, in the aforementioned passage; Crocius, number 570; and Salm, *De Matrimonio*, chapter 6, page 2, number 49, at the end, and others, generally state that children who enter into marriage are not excused from mortal sin if the parents justly object, or if they are reasonably considered to be offended, for example, if such unions lead to dishonor of the family, or if serious scandals or disagreements would arise from them. Finally, the Fourth Opinion, held by Layman, chapter 4, paragraph 14, and Delbene, and Aversa in Crocius, book 6, page 3, number 570, makes a distinction, stating that if the parents attempt to prevent the child from entering into any marriage out of fear of incontinence, the child is not obligated to obey; however, if they wish to prevent a particular marriage, then it must be determined whether the parents are unjustly preventing it; if they are unjustly preventing it, then the child is not obligated to obey; otherwise, if the parents are justly preventing it, namely, if such a marriage would lead to dishonor or scandal for the family, then the child commits a serious sin if he disobeys and enters into the marriage. In the case where the child could not enter into such a marriage without sin, the Doctors state that he is not obligated to do so, even if he had contracted the marriage with an oath; because, since this promise was made concerning an illicit matter, the oath cannot be a bond of iniquity; thus, Rebellius, page 2, book 2, question 14, section 4, number 9; Pignatelli, volume 4, consultation 11, number 1; Salm, *Ibid.*, treatise chapter 2, page 6, number 85, at the end; Bossuet, chapter 14, number 93, along with Menochius, and Cardinal de Laurea, Gabriel à Sancto Vincentio, and Opatov, in Mazoch, page 90, in the cited dissertation, from chapter *Quanto*, on oaths, where it is stated: "An

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oath was..."

[*Latin ed. p. 36*]

It is illicit, and must not be observed, etc. And it is more clearly stated in the response of Alexander II, as found in Mazzochi, page 99, number 486: "This sinner is marked by perjury, because, although he could not legally observe [a promise] without the judgment of the parents, he presumptuously swore to it." And D. Thomas [of Aquinas] states in 2-2, question 98, article 4, ad 4: "It is a true perjury, namely, to swear to something illicit: for by whatever means one swears to something illicit, he incurs falsehood itself, because he is obligated to do the opposite." This is also stated by Tolet, book 4, chapter 22, number 2; Sanch, book 4, division 32, number 4, with Abb. Cov. and Mol.; also Suar. and Graff, in Mazzochi, page 99, number 487, from D. Bonaventure and D. Thomas, 2-2, question 89, article 7, even if the thing promised in the oath were venially evil; and deservedly so, because even a small injustice is a true injustice, of which an oath cannot be a bond. It is generally held by the Doctors that one is not bound to fulfill such a promise when it causes a grave injury to the parents, even if the virgin has been defiled, but it suffices that he provide her with a dowry, as stated by Valent, book 3, division 3; Marchant, book 2, treatise 7, title 4, question 2, section 3, doubt 2, response 2; Sanch, book 4, division 14, number 3, who considers this to be most true, along with Navar, Lop, Cordub, Gutt, etc. Also, the Canons of the Council of Trulla, Tamb, Serius, Graff, and Gob, in Mazzochi (contrary to Bossuet, chapter 44, number 90). The reason is that the virtue of justice cannot obligate one to an act that cannot be fulfilled without sin. From this, it may be inferred that if such a suitor cannot provide a dowry for the defiled woman, nor is he even obligated to take her: because he cannot repair the damage caused to her with a grave injury to the parents. Furthermore, it is posited that, even if he is not bound by the force of the promise, nor does it seem that he is bound by reason of the defilement to repair the damage caused, since no one is obligated to repair damage when it exceeds their own detriment. And whenever a son sins in contracting an unworthy marriage, from which disgrace to the family, or scandals and unhappy consequences, could reasonably be feared, then Laym, chapter 4, number 14; Bonac, question 4, page 47, number 26; Dicast, division 4, doubt 48; Delbene de immun., page 4, chapter 8, doubt 49, section 9, number 43; and Bossuet, chapter 44, number 89, with Pontius and Rebellius, state that the parents may implore the authority of the Prelate to prevent such marriages, and the Prelate is bound to prevent them; therefore (as Bossuet states ibid.), the Prelate would sin mortally if he favored the son, or dispensed with the pre-nuptial announcements. However, the Doctors agree, as noted by the author of the aforementioned dissertation, page 36, doubt 4, number 41, that sons are at least excused from mortal sin if they contract marriage without the consent of their par-

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ents for just reasons, especially: 1. If the father unjustly prevents the son from marriage; as stated by Bellarmine, ibid.; Laym, chapter 4, number 14; Mol, book 5, division 51, number 2; Elbel de IV. præc., number 538, with Spor and commun.; 2. If, for the sake of a greater dowry, an unworthy woman is offered to him; as stated by Bellarmine; 3. If the father wishes to give his son a sickly wife.

[*Latin ed. p. 37*]

I. When harsh conditions are imposed. Guttier, c. 79, n. 19, IV. When a son is unjustly oppressed by his parents. Guttier, ibid. V. If the father is far away, and the son cannot conveniently inform him, and believes that the father would willingly consent. Gonet, c. 8, q. 4. VI. If the father prohibits a just marriage because he wants the son to marry someone against his will: thus, the author of the aforementioned treatise, in the cited passage. VII. If the father prevents the son from marrying without a just cause; then the son is not obliged to obey, and the father sins gravely by preventing it, as is commonly stated by Viva de matr., q. 4, art. 2, n. 2; Boss, c. 44, n. 69, with Guttier, Rebell., etc., and Sanch., l. 4, d. 22, n. 6, with P. Soto, Cordub., Lop., and Vega. Does a father, by unjustly preventing the marriage of his son, incur excommunication? Lopez affirms this, citing Sanch., l. c., n. 9, from the Council of Trent, session 24, c. 9, where it is said: "Under pain of anathema, which they incur by this very act, let no one compel, in any way, directly or indirectly, their subjects or any others, to enter into marriages against their will." However, it is truer to say that Sanch., ibid., with Molinius, Henricus, Guttier, Man., and the common opinion, for, as is clear from the context, the council speaks only of lords and magistrates who compel others to marry. Furthermore, it is more probable that Barbarius, in his commentary on the Council of Trent, l. c., n. 9, with Navarrius, Molinius, Pontius, Bonaventure, Conciliarius, Menochius, Henricus, etc., states that this excommunication was imposed by the council, not against those who prevent marriages, but only against those who compel them. Is disagreement among parents, in itself, a just cause for postponing the marriage? See the statements in n. 877. And can parents disinherit sons who marry against their will, or who marry someone considered unworthy? See the statements in lib. 4, n. 948 and 949. (1). 850. — Question II. Is a son obliged to obey his father who commands him to marry, or to marry a woman from whom the son recoils? The common opinion denies this, as stated by Sanch., l. 4, d. (1). See also the provisions of the Civil Code regarding the consent of parents: Art. 148. A son, before completing his 25th year, and a daughter, before completing her 21st year, cannot marry without the consent of their parents; however, if they disagree, the consent of the father is sufficient. Art. 149. If one of them has died, or is unable to express their will, the consent of the other is sufficient. Art. 150. If both are lacking, the right devolves to the ascendants; if the grandfather and grandmother of

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the same line disagree, the consent of the grandfather prevails. If there is disagreement between the two lines, the consent of one line is considered valid. Art. 160. If all of the above are lacking, a minor under 21, whether son or daughter, must obtain the consent of the family council. Art. 151. Those who have reached the age specified in Art. 148 must seek the consent of their parents or other ascendants, as mentioned above, through a formal act, and this must be done three times, from the beginning of the month to the end of the month, if they have not yet completed their 30th year; if they have exceeded their 30th year, as stated in Art. 155, one act, followed by a lapse of one month, is sufficient. Art. 154. This respectful submission must be communicated by two notaries, or if only one is used, it must be witnessed by two witnesses. — Edit.

[*Latin ed. p. 38*]

23. n. 3. With Scotus, Hostiensis, Sylvestri, Soto, Tamburini, Anglerius, Ledesma, etc., as well as Croix, lib. 6, p. 3, n. 570, with Aversa, and others extensively, from D. Th. 2-2, q. 104, art. 5, where it is stated: "The children are not bound to obey their parents in contracting marriage." And D. Bonaventure, in 4, d. 29, n. 40, states: "By command, the father cannot obligate [the child] to contract marriage with this or that person." However, it is commonly stated by Petrocorus, t. 4, p. 444, q. 5; Layman, c. 4, n. 14; with Sylvestri, Croix, lib. cit.; Toletinus, Sanchez, n. 4; with St. Bonaventure, Bellarmine, Navarrus, Soto, Henricus, etc., and Bossius, c. 44, n. 77, with Ledesma and Ledesma, that the son is to be held to obey, if that marriage greatly pertains to removing grave dissensions, or to alleviating a grave necessity of the parents, not by virtue of the command itself, but by the virtue of piety, because the son is bound to help his parents in their need. And to this, D. Th. agrees, in 4, d. 29, q. 4, art. 4, where he teaches: "The father cannot compel the son to marriage by command, but he can induce him for a reasonable cause; and then the son's relationship to that cause is the same as his relationship to the father's command; but if that cause compels [him], or if the command similarly compels [him]: otherwise, not." But this must be understood, as Sanchez states, n. 5, with Palatius and Ledesma, etc., on the supposition that the son desires to choose the married state; unless (Sanchez excepts with Ledesma) some marriage is necessary to provide for the parents' needs; but even this must be understood with a grain of salt (1). Bossius states, n. 70, with Menochius and Salona, that, given these reasons, the mother can, with moderate and loving coercion, i.e., with paternal reprimands and persuasions, compel the son to a certain marriage. But Sporer states better, in de IV. præcept., c. 5, n. 22, with Bellarmine and others, that only the father is permitted to invite the son to marriage for a just cause, such as propagating the family, increasing assets, or enhancing nobility. However, the same Bossius, in the same place, n. 71, states that in no way can the father compel the son to marriage, if the latter wishes

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to choose a better state, namely, that of religion or celibacy; also, he adds, n. 71, with Sanchez, Guttieri, etc., that if the son has already contracted betrothal, from which he cannot justly withdraw, the father cannot compel him to take another wife.

851. — Question III. Does a notable disparity of condition, or status between the contracting parties invalidate the betrothal contracted? This question must be carefully considered, as this case frequently occurs. It is certain that if the contracting parties were not aware of the disparity at the time of the betrothal, the betrothal is null, provided that the ignorance was prior; but it is valid, if it was concurrent; see Vivam de matr., q. 4, art. 5, n. 7. It is doubtful if they were already aware. The Doctors cited below (1) state: "It must also be understood, whenever that woman was not of such a degree of horror [as to be] intolerable; for charity cannot obligate anyone to such an extent, that he must live with her for his entire life, with whom he would notably abhor." From Hom. Ap. tr. 18, n. 10.

[*Latin ed. p. 39*]

They say that one is bound to marriage; unless, that is, disgrace or scandal to relatives would result, speaking vaguely in this matter. But here, a distinction must necessarily be made between disgrace and scandal. For if marriage could not be contracted without disgrace to the family, then it would not be required that the betrothed be bound to contract the marriage. The reason is that a promise is null when it concerns a matter gravely illicit, namely, one that cannot be fulfilled without great detriment to the family. Thus, Laym. de matr. lib. c., title 10, part 4, chapter 4, number 14, with Navar and Gutt.; also, Spor. de matr., chapter 4, number 203; Nonc. de 4 præc., chapter 4, question 3, with Menoch. and Gobat; and Sanch., lib. 1, title 14, number 3, with Panorm.; Prepos. Cord. Felin. Lop., etc. And although Laym. and Sanch., number 2, say that betrothals contracted with a person of a different condition are valid in themselves, they nevertheless add that if marriage cannot be entered into without disgrace to the family, or great scandal among relatives, such a promise does not obligate, because it concerns an illicit matter, to which no one can bind himself. It should be noted here that any disparity in condition is not sufficient to release the betrothed from the promise of marriage, but a notable disparity is required; for example, if a noble man has betrothed himself to the daughter of a mechanic, as Navar says, chapter 26, number 48, or to the daughter of a farmer, as Busemb. says, number 847, volume 4. See the words in book 4, number 643. But what is to be said if the marriage could be contracted without disgrace to the family, namely, if the disparity is not in nobility, but only in wealth? In this case, two Doctors assert: first, that the one promising is bound to the marriage; second, that he is not bound, indeed, that the one promising cannot contract the marriage if there is a probable fear of great damage, or of capital hatred among relatives. Thus, Sanch. de matr., lib. 1,

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title 14, number 4, with Mol. and Cord. Bonac. de matr., question 4, part 2, number 2; Less., lib. 2, chapter 48, number 9; Laym. de spons., page 4, number 14; Spor. de matr., chapter 3, number 498; Salm. de matr., chapter 4, page 7, number 82, with Azor, Viva dict., number 7, and others. The reason for the first part, namely, that the betrothed is bound to the marriage, is that the one promising, although he may have sinned by making such a prodigal promise, is nevertheless bound by it, because he promised what was his, and since he already knew his better condition, he is considered to have given it freely; for a prodigal promise, although made illicitly, once made and accepted, is valid and creates an obligation. This is the entire foundation of this opinion. Since this reason depends on the question of whether a prodigal promise accepted obligates, this must first be discussed here. There are three opinions on this matter. The first opinion holds that it obligates in toto; this is held by Lug. de just., title 18, number 64; Sanch., lib. c., number 5; Croiæ, lib. 3, part 2, number 795; Spor. de matr., chapter 2, number 498; Fill., vol. 2, title 271; also, Mol., Cajet., and Val., apud.

[*Latin ed. p. 40*]

Sanchez, in Decretalium, lib. 3, cap. 9, n. 27, inclines to this opinion. The reason is that, although the promise was made with prodigality, if the person to whom the promise was made has already acquired a right to the promised thing, the execution of that promise, in order to satisfy the right of another, becomes lawful and due. The second opinion, which Tamburello considers probable, in Decretalium, lib. 3, cap. 3, § 5, n. 20, along with Tancredi, states that this type of promise obligates to nothing, nor even to the part that could lawfully be given; because, since the promise is made indivisibly, the entire matter becomes dishonest. The third opinion, which we consider the truest and most common, as Lugo himself admits, teaches that a prodigal promise obligates to the part that is not prodigal, but not to the excess. Thus, Salm, in De restitutione, cap. 4, p. 6, n. 467, along with Soto, Bannitus, Prado, Serra, as well as Suariz, in Ledo Palacios, Manuel, and Aragona, cited by Sanchez, lib. cit., in Decretalium, n. 27, also considers it probable, and Croize, lib. 3, p. 4, n. 349, also considers it probable. The reason why it obligates to the part is because the useful is not vitiated by the useless; and thus, the second opinion of Tamburello is answered. The reason why the promise does not obligate to the excess is because the malice of prodigality primarily consists in the act of giving, and less so in the promise itself; therefore, it is not lawful to promise prodigally, because it is unlawful to give prodigally. Therefore, assuming that the act of prodigal giving is, in itself, primarily evil, it could never, under any circumstances, be fulfilled without sin; nor can the execution of the promise be made honest by the obligation of the promise made, because no one can obligate himself to perform an unlawful act, as is stated in the rule of law 69, in 6: "In bad promises, it does not impede the observance of faith."

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Consequently, the party receiving from the promise made to him cannot acquire any right to that which the other party cannot lawfully give without sin. And thus, the reason for the first opinion is answered. From this, it follows, as stated by Soto, in De justitia, lib. 3, q. 9, a. 4, ad 2, and by Bannitus, Ledo, Palacios, and Manuel, cited by Sanchez, lib. cit., in De Matrimonio, d. 14, n. 4, that if someone prodigally promises something to a prostitute for the use of her body, he is not obligated to pay the excess; because, since the thing promised is unlawful due to prodigality, the promise is null. It is correctly inferred by Salm, lib. cit., along with others he cites, that if the thing promised is indivisible, the promisor is obligated to nothing, because then the entire matter truly becomes unlawful. Therefore, according to this third opinion, and coming to our case, the bridegroom who prodigally promises marriage, since the thing is indivisible, and the promise as a whole is unlawful, he will certainly not be obligated to fulfill it. It does not matter that the prodigality does not exceed a venial sin; because a promise of a thing that is, in any way, evil, even venially, such as lying, etc., cannot create any obligation, as noted by Salm, ibid., and it is certain. Therefore, to conclude this point, it seems to me, and to other learned younger men (subject to the judgment of the wiser), that...

[*Latin ed. p. 41*]

I. It must be said that a betrothed person, who is superior in wealth, is not obligated in the aforementioned case to enter into marriage; moreover, they would commit only a venial sin through prodigality if they were to do so.

II. This is understood, adhering to the true definition of prodigality: nevertheless, when the fault of prodigality is no more than venial, any reasonable and just cause can remove the vice of prodigality. Therefore, the betrothed person will be sufficiently excused for marrying a less wealthy person, if they know that the other person possesses some special quality, namely, prudence, devotion, great virtue, or even some natural talent, for which reason the betrothed person believes they will lead a peaceful life with that person. From this, it follows that it is rarely the case that a betrothed person is not obligated to marry, because very rarely do the circumstances arise that would excuse the fault of prodigality.

III. However, in the case where the betrothed person has been forced by duress to make a promise of marriage to a virgin, or to an honorable woman, then they are certainly obligated to marry her: because the loss of virginity, or of a good reputation, is a thing of inestimable value, which outweighs, or at least equals, the disparity in wealth of the betrothed; and therefore, in that case, the promise made is certainly valid, since equality already exists in the contract without the vice of prodigality. And this would be the case (according to what is stated by Lugo on justice, book 12, number 34), not only when the woman has lost her virginity, but also when she

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has exposed herself to the danger of losing her reputation. However, this applies only if the disparity is only in wealth; for if it is in nobility, then even if virginity has been lost, the betrothed person is not obligated to marry if it would bring dishonor to the family; indeed, it is probable that they would not even be obligated to compensate for the damage caused, as we have said in book 4, number 643. Regarding what the Doctors say, as we have stated above, namely, that such a betrothed person cannot enter into that unequal marriage (understand that the disparity is only in wealth, and not in nobility with dishonor to the family, as we have already distinguished), if there is a probable fear of damage, or of the hatred of relatives; they give the reason that, in that case, the betrothed person would be gravely sinning against charity, and therefore, since entering into that marriage would then be a difficult thing, the promise made to that person cannot obligate. And for the same reason, Sanchez, in the same place, number 3, with Navar, Cordub, Lop, and Gutt, says that this is the case, even if the betrothed woman has suffered a loss of virginity. And even if (as Sanchez adds ibid. with Lop), there is no disparity between the two parties. I confess that this is the common opinion, and, speaking in general terms, it is true, when the son could conveniently avoid such scandals; but if he could not do so without a serious personal inconvenience, it seems to contradict the reason given, that charity does not obligate when there is a serious personal inconvenience. Therefore, a young woman is not obligated to remain at home indefinitely to avoid scandals for men, so that she may not be deprived of her freedom for a long time; because that would be a serious inconvenience to her, as has been said in book 3, number 53, with Cajet, Sanchez, Pal, Less, Nav, Azor, Salm, Spor, and others. Therefore, if a woman is not obligated to abstain for a long time from going out, so that she may not be deprived of her freedom for a long time.

[*Latin ed. p. 42*]

Even if others are to suffer scandal; how can a son be bound by a mortal sin, lest his parents suffer scandal (without, however, their disgrace, as we suppose), by abstaining from a desired marriage? Surely, the bridegroom does not seem to suffer a grave inconvenience; if he is forced to abandon the marriage with the girl, with whom he believes he will lead a peaceful life, because of a vehement passion of love, with which he feels affected towards her? Indeed, all those Doctors mentioned in the preceding question consider this a grave inconvenience, and therefore excuse sons from grave sin when entering into marriage against the will of their parents; because, as they say, Sanchez, book 4, title 23, number 40; Escobar, on marriage, doubt 175, number 723; and Salm, on marriage, chapter 6, page 2, number 23, everyone is bound by marriage to perpetual servitude, with the greatest burdens attached, which, unless undertaken with entirely free will, will be very difficult to bear. Therefore, if sons are excused from obedience

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to their parents for this reason, why should they not be excused from the precept of charity, which does not impose an obligation with such a grave inconvenience? Therefore, it seemed to me and to other learned younger men, as stated by Pal, book 2, page 42, number 9, that sons should be bound by a mortal sin to obey their parents, by abstaining from such a marriage, when they can do so without great inconvenience to themselves. All the more so, because (as Sanchez himself says, book 4, title 14, number 3, and Holz, number 266), such scandals, although previously proclaimed, easily disappear once the marriage has begun, and minds are reconciled. Furthermore, since this is contrary to the common good, I leave it to the wise to discuss (4). 852. — « He who culpably breaks off betrothal loses his betrothal gifts, » and is bound to return them to the other party, and to make restitution for whatever was incurred in order to complete such a contract. From this, it should be noted that, if something is promised by a woman to a man, such as that she will marry him, the promise is valid, as can be seen from c. De illis, de condit. appos., because in that case, the promise is presumed to have been made for the cause of the dowry. Conversely, if a man promises something to a woman, if he will marry her, the promise is not valid, because in that case, the promise is presumed to have been made for a shameful reason, namely, to satisfy lust; thus, Sanchez, book 4, title 33, number 3, and Salm, op. cit., chapter 4, page 8, number 408, with others, generally, from l. Si stipulatus, §. Si tibi, ff. de verbor. obligat., where this is expressly stated. However, this is excepted if the man is unknown or elderly, and the woman is noble or young; because in that case (1) « The Doctors say that even if marriage is not a disgrace to the family, nor would it » be wrong to contract it, if they feared damage or hatred among the parents. But considering that » this obligation not to marry would only be an act of charity in this case, I do not know how » the bridegroom could be bound by a mortal sin to not enter into such » a marriage, in order to avoid hatred among the parents; unless it was because such » a marriage would give rise to common disturbances among many families in a » small town, so that it could in some way be judged to be a common evil to the entire region. » Hom. Ap. tr. 18, number 16. Edit.

[*Latin ed. p. 43*]

The promise is justly made in compensation for nobility or youth, according to *lib. Mulieres*, c. de dignit., 853.

Note II: It should be noted that a promise of a penalty imposed in betrothals is illicit and invalid, according to c. Gemma, de sponsal., because such a penalty would injure the freedom of marriage; thus, in the aforementioned text: "Since marriages ought to be free, and therefore, such a stipulation, because of the imposition of a penalty, is justly to be condemned." Hence, the Doctors commonly say that those who enter into betrothals with such a penalty sin. Others say that it is a mortal sin, as Bonac. qu. 4, p. ult.,

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no. 3, and Salm. de matr., c. 4, p. 8, no. 94, state. Still others believe it to be venial, as Sanch. l. 4, d. 30, no. 2, and Boss. c. 44, no. 445, with Cajet., Arm., Gutt., and Reb., state.

This applies, however, if the penalty is imposed by the betrothed, or by their relatives or friends, as commonly held by Pal. p. 9, no. 4, Sanch., no. 44, and Salm., ibid., no. 95, with Aversa, Lop., and Cornejo. It does not apply, however, if the penalty is imposed by a stranger, as the aforementioned authors state from *lib. Quæ omnia*, c. de sponsal. The reason is that in the first case, the freedom of marriage is also diminished, because the betrothed might enter into the marriage in order not to have to pay such a penalty to relatives or friends; otherwise, it is different when the penalty is imposed by a stranger.

Furthermore, it should be noted that this applies if the penalty is generally imposed even on one who justly breaks the betrothal; in that case, it is certain that the promise of the penalty does not obligate, but the question is: I. Whether such a promise of a penalty is valid and licit, if it is added to one who unjustly breaks the betrothal?

The first, which is sufficiently probable, denies this, and Sanch. l. 4, d. 30, no. 2, Bonac. p. ult., no. 4, Boss. c. 44, no. 420, Conc. p. 267, no. 30, and Aversa, Becan., and Dic. apud Salm., ibid., no. 96, hold this view. They prove this from *lib. Titia* 434 ff., de verb. oblig., where it is said: "For it has seemed dishonest to bind marriage with a bond of penalty, whether future or already contracted." They also prove this from *lib. Mulier*, §. fin. c. de sponsal., where it is said: "If a caution containing a penalty of the stipulation has been interposed by both parties, it will have no force, since in contracting marriages, there must be free power." They also prove this by reason, because the freedom would still be injured; it could happen that the party who justly could break the betrothal, would not be able to prove their cause in court, and thus would be forced to enter into the marriage.

The second opinion, which is more probable, affirms this, and Pontius l. 42, c. 49, no. 8, Laym. c. 4, no. 8, Ronc. p. 435, qu. 3, r. 2, Holz. no. 203, with Anacl. and Haunold, Palaus d. 1, p. 9, no. 3, with Suar., Vasq., and Con., and Salm. with Leand. and Diana, hold this view. The reason is that such an addition of a penalty is neither against natural law, nor against positive law. It is not against natural law, because it is reasonable in itself to impose a penalty on one who culpably breaks the betrothal; nor is it against the freedom required for marriage, to prevent betrothed from unjustly breaking the betrothal; for although laws are

[*Latin ed. p. 44*]

Marriage approves of a reasonable freedom, but it condemns an unreasonable one; and therefore, it does not favor the freedom of marriage when a judge compels the betrothed to enter into marriage through censures, imprisonment, or a monetary penalty, since such fear is justly instilled.

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However, that someone might sometimes justly withdraw, and this cannot be denied, is a matter of circumstance, and it does not invalidate the foundation of our opinion. Nor do the aforementioned laws stand in the way, for those laws only rendered the promise of a penalty in betrothals invalid to the extent that, formerly, according to civil law, the will of one party was sufficient to fulfill the obligations of betrothal, whether with a reason or without a reason, as is evident from l. 4, c. de spons. and the Gloss there; but according to canon law, c. Præterea 2. de spons., the consent of both parties is absolutely required. Furthermore, in l. fin. ibid., the payment of double, triple, or quadruple the dowry is approved as a valid and lawful penalty for one who unjustly withdraws. Indeed, Emperor Leo in Novell. 48 (as you can see in Ponthieu) expressly approves the addition of a penalty in betrothals against those who are fickle or unjustly withdraw, adding that this has already been established by custom.

Question II: Is one who justly withdraws from betrothal obligated to pay the promised penalty, if that promise has been confirmed by oath?

The first opinion affirms this, and this is held by Lessius l. 2, c. 47, n. 56, v. Ubi, Mol. tr. 2, d. 451, Suar. de relig. l. 2, c. 23, and Con. d. 22, dub. 5, n. 25. The reason is that, although a promise of a penalty is forbidden, its payment is not forbidden, since it is either due by the force of a natural obligation, or at least by the oath, according to the aforementioned l. 4, n. 477, where it is said from cap. Debitores, de furejur: "An oath binds, even if the promise made is annulled by law in order to harm an unjust creditor, as is the promise to pay interest."

The second opinion, which is more probable, denies this, and this is held by Sanch. l. 4, d. 31, n. 24, Ponthieu l. 12, c. 49, n. 7, Bossius c. 41, n. 443, with Barb., Bonac., Filliuc., and Vill. Pal. p. 9, n. 6, with Gomez, Covar., and Gutt. Escob. n. 195, with Bartol., Ang., and Præpos., and Salm., with Aversa, Trull., Cornejo, and Dic. The reason is that, since the addition of a penalty against one who justly withdraws is unjust, and therefore illicit, it does not bind by the oath, which cannot be a bond of injustice; furthermore, since the law prohibits the promise of a penalty, it does not so much prohibit the promise itself, as it does the payment; it is not so much the promise as the payment that harms the freedom of marriage. In a usurious contract, the promise is invalid, but not the payment of usury, and therefore, the one who promises is bound by the oath.

Question III: If a penalty is added in betrothal and is paid, is the recipient of that payment obligated to restore it?

The first opinion denies this, and this is held by Sanch. l. 4, d. 31, n. 2, Less. c. 47, n. 56, and Escob. n. 292, with Mol., Henr., Vega, Lop., etc. The

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reason is that the laws only invalidate the promise, but not the payment.

[*Latin ed. p. 45*]

And they confirm this from a similar case, namely, that the one who receives money won in a prohibited game is not obligated to return it, although the winner was not obligated to pay it. However, the second opinion is more probable, and this is held by Salm. de matr. c. 4. p. 8. n. 406, along with Dicast. Boss. c. 44. n. 449, and Hurt. Gutt. and Mascard., and Pal. p. 9. n. 9, along with Soto, Med. Lop., etc. The reason is that the recipient does not have the right to retain [the money], since the law completely invalidates such a promise, as is clear from l. Mulier, §. fin. c. de spons., where it is said that such an addition of a penalty, on either side, will have no force. Therefore, lacking a title, he cannot acquire ownership of the payment. Nor does the equality of the game present an obstacle; for there, the winner is not obligated to return the money because the contract is valid in itself, and the laws only provide the winner with the right to demand the payment, as we said in l. 4. num. 887, and therefore the winner can retain it, until it is demanded in court. However, Palaus, along with Guttier, limits this second opinion, unless the one who paid the penalty already knew that he was not obligated; because then it is rightly considered a gift. However, in this case, this donation is not presumed, as Boss rightly says, from Gutt. n. 484, according to l. Campanus, ff. Oper. libertor. Quær. IV. Should a legacy be paid to a girl under the condition that she marry a certain man, if she marries another? In itself, it is certain that it should not be paid, according to l. Titio, §. 4. ff. de condit. et demonst., because, since the girl is free to accept or reject such a marriage, the freedom required for marriage is not violated. However, it should be excepted, unless otherwise the legitimate rights of the daughter are violated by the father; or unless she is induced to marry an unworthy person; because then that condition is rejected as scandalous, and the legacy is due to her if she marries another, according to l. Cum ita, §. Videamus, ff. eod. tit. Thus, commonly, Salm. de matr. c. 4. p. 8. n. 107, and Boss. cap. 44. n. 468, along with Rota Rom. Mol. Gutt. Villal. Laym. Pontio, Vasq., etc. Also, Buss. says n. 469, along with Cov. Sanch. Gutt. Mol. Vill. etc. (contrary to Pontio, and others ibid.) if the girl, in order to obey her father, marries another; because, even with the opinion held and presented by Pontius, that the daughter does not sin if she marries a worthy person without the father's consent, nevertheless (as we saw in n. 849), it is common among Doctors to consider it contrary to decency to expect the father's consent in marriages; and therefore, since the girl cannot honestly marry without the father's consent, she should not be deprived of the legacy. But it can be replied that, for the same just reason, namely, so that she does not lose the legacy, she would be excused from such a dishonorable act if she married a person designated as worthy. Quær. V. Should a legacy left to a woman so that she does not marry be paid to her if

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she does marry? See the words in l. 4. n. 930. v. Dub. 7, where we said that it should be paid if the woman was a virgin; otherwise, if she was a widow. Resp. 2. where Trent is not accepted, betrothals legally pass into marriage through any external signs, marital.

[*Latin ed. p. 46*]

Affectuous displays, for example, through embraces. I say "Trid.," because where this is permitted, these signs do not hold, if they are clandestine; therefore, one can sin gravely in such matters. Hence, the following: 854. "It is not permitted to betrothed couples to have indecent touches, when they are preparing for the embrace, and for intercourse, although embraces and kisses are permitted as a sign of love." (Sanchez, loc. cit.). See Diana, p. 2, t. 47, r. 6, and t. 4, misc. r. 34, and p. 4, r. 134.

Question: Are kisses and chaste touches mortal sins among betrothed couples, if they are intended to arouse pleasure? (It is said "chaste," for it is certain that immodest ones are lethal). There are two opinions on this matter:

The first opinion, held by Sanchez de Matrimonio, lib. 9, cap. 47, n. 37, and Salm. de Matrimonio, cap. 45, p. 6, n. 94, along with Aversa, Diana, and Azor, is that they are only venial sins, even if carnal pleasure is intended, and there is a stirring of the genital organs, provided that it is not excessive, and there is no danger of pollution, or consent to intercourse. The reason is that, just as marriage sanctifies intercourse, so betrothal, which is a kind of beginning of marriage, sanctifies those acts which are a beginning of intercourse. Moreover, because these acts foster love for the marriage to be contracted. Salm. adds that these acts may even be excused from being venial if there is a just cause, for example, to show affection, to gain favor, to avoid rudeness, or to maintain the customs of the country.

The second opinion, which is far more probable and should be followed, is held by Lessius, t. 14, n. 59; Mazzotti, t. 4, p. 169; Roncaglia, p. 299, qu. 6, r. 4; Concil. t. 10, p. 359, n. 9; Bonini, de Matrimonio, q. 4, p. 9, prop. 1, n. 6, along with Henricus and Rebellius, Croix, l. 6, p. 3, n. 151, along with Mendo and others, and Viva de Matrimonio, qu. 1, art. 7, n. 6 and 7, along with Suarez, Perez, and Hurtado. This opinion teaches that such acts are forbidden to betrothed couples in the same way that they are forbidden to those who are unmarried. The reason is that a betrothed person does not acquire any right over the body of the betrothed; and even if a certain right is acquired through betrothal, because he is not yet perfectly the owner of the thing, he cannot use that thing, not even imperfectly: just as he to whom the sale of a vineyard has been promised, cannot use it, not even imperfectly, until the vineyard has actually been sold to him and delivered. Furthermore, since intercourse is not permitted to betrothed couples, neither are those acts which are only ordered to intercourse. However, Croix and Viva, in the places cited, along with other authors, concede that kisses

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and embraces, according to the customs of the country, may sometimes be permitted to betrothed couples: but not otherwise than they are permitted to unmarried people. And this is probable, provided that such acts are not prolonged or pressed for a long time, as Roncaglia rightly observes in the place cited, who also admits them for the demonstration of goodwill: but I would not admit them, unless such a custom prevailed, as Mazzotti also says in the place cited. What Busembacher says in lib. 4, n. 434, and Lessius say...

[*Latin ed. p. 47*]

ib. nos. 58 and 59, following Cajetan, etc., namely, that to betrothed persons, modest touches are permitted, if they intend only sensory pleasure; otherwise, if they intend venereal pleasure. As rightly stated by Ronc. ibid. and Croiae, no. 451, at the end, it is not practically probable, because there is ordinarily always a certain danger of consenting to venereal pleasure, when sensory pleasure is so closely connected. For this reason, even the first opinion is not practically probable; because in matters so delicate, it is morally impossible in such acts, undertaken for the sake of pleasure, to restrain oneself from falling into pollution, or into consent to marriage. But is it permissible for betrothed persons to rejoice in the prospect of the future marriage? See what was said in book 2, no. 24, where we stated that the negative opinion (contrary to Bonac. Salm. etc.) should be held absolutely, along with Holz. Pal. Laym. Sanch. Ronc. etc., to which add Lessius, book 4, no. 420, and Mazzotti, DUBIUM III.

How are betrothals dissolved? 886

I. By marriage with another.

II. By mutual consent between adults.

What if the betrothals have been sworn? 886

How are they dissolved between minors?

What if they themselves have promised marriage by oath? 857

III. By a hindering impediment arising subsequently.

Dub. 1. Are the betrothals then dissolved even on the side of the one who is not at fault? 886

Dub. 2. Is the one who is at fault obliged to seek a dispensation? 889

Dub. 3. Can betrothals contracted with an impediment, under the condition of a dispensation, be valid by themselves, if the dispensation is not obtained? 860

IV. By the fault of the other party? 861

Are betrothals dissolved by the fornication of either of the betrothed?

Dub. 1. What if the bride has been forced? 862

Dub. 3. What if either of the betrothed commits fornication? 863

V. By a notable change, namely:

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1. If there is fear of hatred, etc.

2. If a harmful defect arises.

3. If poverty arises.

Is it permissible to marry with a hidden, harmful defect? 865

Is it permissible with a non-harmful defect? And what if the bride is asked if she is a virgin? 866

VI. By the departure of one party to a distant place.

What if it is to a nearby place, and is there an intention of returning? 867

VII. By the lapse of a fixed time.

Dub. 1. What if it is doubtful whether the term has been completed to create an obligation? 868

Dub. 3. What if one party has been justly impeded?

Dub. 3. Is the other party also released after the term, even the one who is not at fault? 869

VIII. By the acceptance of holy orders, and entrance into religion.

IX. By a vow of chastity.

These matters are discussed separately, and I. concerning religious profession.

Dub. 1. Are betrothals dissolved by entrance into religion before profession?

Dub. 3. If betrothals have been sworn, is the betrothed obliged to enter into marriage before entrance? 871

II. Concerning the acceptance of orders.

Dub. 1. Does the betrothed who is accepting holy orders commit a sin against the betrothed? 872

Dub. 3. Are betrothals dissolved by the acceptance of minor orders? 873

III. Concerning the vow of entering religion, accepting holy orders, or maintaining chastity.

Dub. 1. Are betrothals dissolved by a vow of chastity, or by accepting holy orders, even on the side of the one who makes the vow?

[*Latin ed. p. 48*]

874. Doubt 2. What if the bridegroom, after the consummation of the marriage, demands a divorce?

875. Question. This again concerns the dissolution of betrothal through a valid marriage with another person, and the question is whether this also dissolves the betrothal even after the death of the spouse?

876. Question. And what if a new inheritance arises? And what if a notably better marriage is offered?

877. Question. Is disagreement between the parents a cause for dissolving the betrothal?

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878. Doubt 1. Is the authority of a judge always required to dissolve a betrothal? Doubt 2. What proof is sufficient in the external forum, and what is sufficient in the internal forum?

Answer. Betrothals are dissolved in the following cases:

1. Through a valid marriage contracted with another person. *Boni Pastores*, 7. (However, does this also apply after the death of the spouse? See below, no. 875.)

2. Through mutual consent, as with any contract. *Layamus*, chapter 2, no. 8.

855. Among adults, betrothals are dissolved by mutual consent, even if confirmed by an oath, not only validly but also licitly, if there is a reasonable cause; otherwise, it would be at least venial sin. This is the common opinion of *Viva de Matrimonio*, question 2, article 1, no. 4; *Holzmann*, page 296, no. 28; *Palazzo*, page 47, no. 4, with *Concilia* and *Gutter*; *Sanchia*, book 4, title 42, no. 8, with *Navarro*, *Henricus*, and *Lopus*; *Pontius*, book 42, chapter 9, no. 2, with *Molinus*, *Rebellicus*, and *Escobar*, no. 264, with *Vivaldus*; *Philippus Archilegus* against *Sotus*, *Sylvester Anglicus*, etc., ibid., no. 262. This is also probably stated by *Roncaglia*, book 3, question 1, ruling 4; *Palazzo*, *Viva*, and *Holzmann*, books and chapters; and *Salm*, on marriage, book 2, page 4, no. 5 and 14, with *Sanchia*, proceeding even if the betrothal is vowed principally for God's sake; because an oath made in favor of a third party, although principally made in honor of God, always includes a condition, namely, that if the other party accepts or does not renounce it, according to what is said about oaths, book 4, no. 493, from *D. Thomas*, 2-2, question 89, article 9, 2, where it is said that an oath made for the benefit of a neighbor can well be revoked by him. However, in the case where only one party consents to the dissolution of the betrothal, the betrothal is not absolutely dissolved, but only the other party is given the right to withdraw, according to common law. See *Salm*, book, chapter, no. 4.

856. Among minors, however, betrothals are not dissolved unless they themselves reach the age of majority, according to the chapter "De illis, de despons impub." where it is stated: "When he has reached the age of majority, and requests it, they can be separated from each other by the judgment of the Church." However, upon reaching the age of majority, each party can withdraw by immediately requesting it, that is, after three days before a judge or witnesses, otherwise it is presumed that they have consented. However, this period of three days begins to run from the time when the age of majority is attained, not simply from the attainment of the knowledge of the right to withdraw; the time granted by the law to use this right does not run unless the right is recognized. If a minor, knowing and aware of his right, wishes to withdraw, but does not do so immediately, he is considered to have consented to the betrothal. It is inferred that a minor,

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upon becoming an adult, must immediately request a separation, from the cited chapter "De illis": from the words: "When he has reached the age of majority, he must request it, etc." Since no time is specified, it is understood to mean immediately, as is the common understanding.

[*Latin ed. p. 49*]

Here, the Doctors understand, as we have stated in n. 845, that what is due must be paid immediately. It is proven that this must be done within three days. This is demonstrated by the following: in the book *Decretales*, final section, chapter on Errors of Advocates, it states: "within the continuous period, that is, three days." Thus, commonly, Sanchez, book 4, title 51, n. 14; Pontius, book 40, chapter 4, n. 4; Salm, ibid., n. 9; Viva, book *De Matrimonio*, page 47, n. 5, with Guttier, Felin, and Holzm, n. 213, with Pichler, state this. Sanchez, n. 46, and Pontius, number 5, state that if one of the betrothed parties dissents before reaching the age of puberty, and persists in this dissent, the betrothal is dissolved when that person reaches puberty. However, if the dissent is only internal, Sanchez, book cited, and Bonaventure, question 4, page 6, n. 3, with Con, etc., believe that it can also be resolved in conscience; but it is more probable that they deny this, as Conc, page 268, n. 3, and Pontius, and Pal, books cited, with Guttier, etc., argue, because this benefit of resolving the betrothal is not granted by law unless the parties request it, which certainly implies an external act; furthermore, just as internal consent alone is not sufficient to enter into a contract, neither is internal dissent alone sufficient to dissolve a contract. The question arises: can a person who, while still a minor, has affirmed the betrothal by oath, dissolve it upon reaching the age of puberty? Bonaventure, n. 4; Roncaglia, page 436, question 4, response 2; and Salm, *De Matrimonio*, chapter 2, page 4, n. 15, with Aversa, Becano, Dic, and Sanchez (as cited), book 4, title 51, n. 22, deny this. They prove this by citing chapter 4 of the letters on betrothal, where it is expressly stated. They also argue that, because the betrothal of minors, even with an oath, is valid, although dissoluble, it is therefore confirmed by the oath. However, Pontius, book 42, chapter 9, n. 8; Conc, page 368, n. 3; Viva, question 2, article 4, n. 3, with Perez, and Pal, page 47, n. 9, with Palud, Henry, etc., and Salm, book cited, believe this to be probable, because an oath takes on the force of the law of the contract, or betrothal, which (as we have seen) is revocable among minors. The text cited does not contradict this, for, as Pontius, Pal, and Viva point out, the passage there concerned only those who are nearly reaching puberty (as the text itself expresses), that is, those who, having reached the age of puberty through malice, are legally considered adults, and Sanchez, in the location cited, n. 24, with Cov, Lop, etc., agrees with this view.

857. — III. If an impediment that dissolves marriage arises. Bonac, page 8, n. 5. Doubt 4. Does a subsequent impediment dissolve the betrothal? A

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distinction must be made: If the impediment is one that impedes marriage, it is commonly and more probably held by Sanchez, book 4, title 56, n. 3; Pal, page 26, n. 4; Escob, n. 485, with Palud; Bonac, page 7, n. 8, with Reg; and Salm, with Con, against Sotomayor, Aversa, and Led, that the betrothal is not dissolved, unless the impediment arises from a vow of religion, and very probably also from a vow of chastity, as mentioned in n. 873. Doubt 4. The reason is that other impediments are not currently in force, nor do they require a dispensation. However, if the impediment is one that dissolves marriage, it is certain among all (see Salm, *De Matrimonio*, chapter 2, page 5, n. 70) that the betrothal is dissolved.

[*Latin ed. p. 50*]

In the innocent party's case, so that this party is not obliged to admit a dispensation. It suffices for the marriage to be dissolved by the mere reputation of such an impediment, as Viva rightly observes in question 2, article 7, number 4, citing from "Cum in tua" 27, concerning marriages, and from "Super eo" 2, concerning consanguinity, where it states: "If it is not manifest, nevertheless the reputation of the place has weight, etc." However, for this, a reputation is required, not merely a rumor; a reputation exists when there is an opinion of an impediment among the majority of the neighbors, while a rumor exists among the minority. Viva, in the aforementioned passage. But it is doubtful whether, in such a case, the marriage is also dissolved from the side of the guilty party? Dic. tr. 40, d. 4, dub. 38 affirms this, and Salm. in the aforementioned passage, at the end, considers it probable, because, assuming such an impediment, the marriage has already become impossible. However, Sanch. l. 4, d. 56, at the end, and Pal. p. 26, n. 2, with Con. and Gutt., more commonly and probably deny this, stating that the obligation of the marriage is suspended until the impediment is removed; because it is not just that the guilty party should profit from his crime, citing from "Sed" 858, in "De Translat. prælat."

Doubt 2: Is the one who imposed the impediment obliged to obtain a dispensation, or to accept it when offered? Some, such as Fill. Con. and Aversa, cited by Salm. ibid. n. 72, say that he is not obliged, even if the marriage has been promised, unless he is obligated for this reason due to the damage caused, namely, defloration or the loss of reputation; because the promise is understood to have been made, with things remaining in the same state, citing from "Quernadmodum, de jurejur."; and because no one is obliged by law to obtain a dispensation for himself. Others, such as Ronc. p. 440, q. 40, r. 2, Pal. p. 26, n. 4, with Ochag. and Salm. ibid. n. 73, with Led., etc., say that he is obliged, even considering the damage caused, to seek a dispensation, together with the diligence and expenses that are commonly incurred for such a dispensation, even if they are great. The reason is that everyone is obliged in every way possible to compensate for the rights of another, which he has unjustly harmed, by imposing an

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impediment. Others, however, as Sanch. l. 4, d. 56, n. 4, Viva qu. 2, art. 7, n. 3, Wigandt tr. 46, n. 22, Bon. p. 7, n. 9, with Gutt. and Spor. n. 277 (with common agreement, as Spor. asserts), say that he is indeed obliged, even if the damage caused is not repaired, if a dispensation can easily be obtained; otherwise, if it requires great expenses and a long delay; because the obligation arising from the marriage urges the betrothed to provide only ordinary and easy means, and not difficult and extraordinary ones. However, Spor. in the aforementioned passage, with Tamb., makes an exception if the damage of defloration or reputation is to be repaired, as mentioned above: because in that case, even a great expense would be incurred; but not so great as to force him to change his condition. Furthermore, is one who has a vow of chastity obliged to take a deflowered virgin under the promise of marriage? And is he obliged to seek a dispensation who, under the promise of marriage, has violated a relative? See the statements in l. 4, n. 649 and 650.

859. Doubt 3: If marriages are contracted between those who have a marriage impediment, under the express condition that the Pope will grant a dispensation,

[*Latin ed. p. 51*]

Whether, once the condition is fulfilled, they remain valid without a new agreement? See the aforementioned passage in book 4, title 650, where we expressed a positive opinion along with Lugo, Laym, Sanch, Pal, Salm, etc., to which we add Pontius, book 42, chapter 7, title 1, and Bonaventure, book 4, page 7, title 40. For although the betrothal is not a true betrothal before the condition is fulfilled, it nevertheless creates an absolute obligation to await the outcome of the condition; therefore, the agreement persists until the condition is fulfilled. Hence, it follows that before the condition is verified, these betrothals do not constitute an impediment to public honor; however, the betrothed man would sin if he were to marry his betrothed's sister; and such a second betrothal would be null, since it would involve a promise concerning an unjust matter, which does not obligate, as rightly stated by Spotorius, title 214, and Pontius, book 7, chapter 36, title 7, with the decree of the Sacred Congregation 860.

IV. Through a grave offense committed by the other betrothed, the innocent party may be absolved, such as: 1. Fornication, whether spiritual, such as heresy, or carnal, both by the betrothed man and the betrothed woman, after the betrothal, and by the betrothed woman even before the betrothal, but unknown to the betrothed man, even if it was committed by force. Bonaventure, part 8. Indeed, if the betrothed woman permits herself to be touched immodestly by another through kisses and embraces, the betrothed man may withdraw from the betrothal; but the reverse is not true, because, although the betrothed man does this, it is not a disgrace to the betrothed woman, nor does it constitute a change of any significance.

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Regius, Decisions, book 4, title 283. (So also Sanch, book 4, title 55, title 5, and Salm, on marriage, chapter 2, page 5, title 80, with the Council of Trent, etc.)

However, they limit this (as also Sanch and Salm, books and chapters, with the aforementioned authors), unless such kisses and touches are so frequent as to indicate a strong inclination of the betrothed man's mind towards the other, so that there is a reasonable fear that the betrothed woman will not remain faithful. If, however, both betrothed commit fornication after the betrothal, Pal and Bonaventure, contrary to the Council of Trent, Sanch, Laym, and Pontius, teach that neither can withdraw, except that the latter allows this to the man in this case, because the offenses are unequal, and a far greater harm threatens him because of the uncertainty of offspring. Regius, Decisions, book 4, title 284, 2. A grave theft, homicide, etc., or something similar, which causes grave damage or infamy. Bonaventure, page 8, title 42, 864.

If the fornication occurred before the betrothal, it is certain that the man can abandon the woman if he knows of her fornication after the betrothal. Conversely, the woman cannot rescind the betrothal because of the fornication of the betrothed man with another, as commonly taught by Sanch, book 1, title 63, title 9, Pontius, book 42, chapter 48, title 2, and Salm, ibid., page 6, title 88, with Pal and the Council of Trent (contrary to Holzmüller, title 265). Unless, they limit, Sanch, title 40, Pontius, book cited, Tamburelli, on marriage, chapter 5, paragraph 9, title 6, and Roncaglia, page 139, question 7, title 2, with the Council of Trent and Pal, if the man has also had offspring from another, or even if he himself is known to have been devoted to this vice with many women. If, however, the fornication occurred after the betrothal, it is certain that the betrothed man can abandon the woman if she has committed fornication voluntarily. But it is doubtful 4.

[*Latin ed. p. 52*]

Can a man be released from betrothal if the woman has been forcibly subjected to fornication? Armilla, Tabiena, Rosella, and others, according to Escob, number 273, deny this. For, as they say, if she is free from guilt, she should not be unjustly deprived of her rights. However, Sanch, book 1, title 55, number 7; Nav, chapter 22, number 27; Cono, page 276, number 28; Spor, number 272; Holzm, number 254; Pont, book 12, chapter 47, number 3; Pal, page 26, number 5; Laym, chapter 2, number 44, with Sylv. and Cov., Escob, number 175, with S. Antonina, Palud., Soto, and Led., and Bon., page 8, number 3, with Con., Fill., Henr. Gutt., and Reg., from chapter 33 of *Raptor*, causes 27, question 2, expressly permit the betrothed man to repudiate a woman who has been violently abducted. The reason is that the woman, through such oppression, although without her own fault, becomes notably less worthy; hence, the circumstances are notably altered, as will be explained shortly in number 863 (4).

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862. — Doubt 2: If both betrothed persons commit fornication, is it permissible for either to withdraw? Three opinions are presented. The first opinion, held by Pal, page 2, number 40, affirms that even if the fornication of the woman is more grievous, if the man also violates the given promise through his own fornication, he provides a just cause for the woman to withdraw. The second opinion, held by Viva, question 2, article 2, number 2; Bonao, book 4, page 8, number 6, with Palud., Holzm, number 258, with Babenst., also Avers. and Perez, apud Salm., *de matr.*, chapter 2, page 5, number 83, states that neither can withdraw, but compensation must be provided, so that neither can recede from the betrothal. The reason is that, just as after a marriage contract, if either spouse commits adultery, neither can seek divorce according to chapter 6 on Adultery; so too, if after betrothal, both betrothed persons commit fornication, neither can withdraw. The third opinion, however, is more probable and common (as Pal himself admits), and is held by Pont, book 12, chapter 47, number 3; Sanch, book 4, title 55, number 9; Laym, chapter 2, number 42; Cono, page 276, number 26; Escob, number 184; Spor, number 271; Renzi, page 435, question 3; Salm., ibid., number 84, with Con., Henr., Diana, Leand., Dic., etc., teach that the betrothed man can rightfully withdraw, but not the woman. The reason is that in this case, an equal compensation would not be provided, since the fornication of the woman is far more grievous than that of the man. The reason for divorce due to adultery is different, because the obligation of marriage, concerning both parties, is more difficult to dissolve than the obligation of betrothal, which can be dissolved by any notable change of circumstances (such as this), as will be said next, in numbers following (1).

"If the crime were fornication," says St. Alphonsus in *Homo Apostolicus*, book 1, treatise 18, number 18, "it is necessary to distinguish between a man and a woman. Concerning the woman, it is certain that the man is freed if she has been carnally known by another, even if she has not lived with him, according to the common and more probable opinion... Conversely, concerning the man, whether he himself has committed fornication or whether, after betrothal, he has also committed fornication, Sanch., Pont., Castrop., Salm., and others, say that the woman cannot withdraw. However, the aforementioned authors, along with others, make an exception, and rightly so, if, after free betrothal, the man learned that the woman had had a child from another man, or that she had frequently fallen into this vice, having intercourse with many men."

[*Latin ed. p. 53*]

863. — "V. If a notable change occurs, or is discovered, which, if known from the beginning, would have prevented the marriage;" (Thus, *Commentaria* of Sanchez, Book 4, Title 63, paragraph 2; *Pontifical*, Book 42, Chapter 6, paragraph 48; *Palatinus*, page 29; *Salm.* on Matrimony, Chap-

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ter 2, page 5, paragraphs 66 and 67, and others throughout. And this is stated by the *Vivae Quaestiones*, 2nd article, paragraph 6, even if a union has already taken place, it is sufficient to compensate for the damage.) "What kind of change is this? For example: I. Enmity or deep hatred between the betrothed; to which is referred the harshness or cruelty of character, discovered only after the betrothal. Also, a just fear that scandals or serious hatreds may arise from the marriage between parents or relatives. *Laym.*, Chapter 4, paragraph 48; *Bonifacius*, page 8, paragraph 8, etc. II. If either party suffers from leprosy, paralysis, a venereal disease, etc.; or if there is a serious change, such as the loss of an eye, nose, or other serious deformity, especially if the bride or groom becomes unfit for the work of earning a living, or for acquiring a profession necessary for the support of the family. *Dian.*, page 3, treatise 4, rule 85; *Sanchez*, Book 4, Title 57; *Conciliaria*, Dist. 43, doubt 8; *Laym.* and *Bonifacius*, cited above." (Thus, all agree with the *Supplementum* to the *Doctor Thomae*, Question 43, article 3, paragraph 3, and this even if there is no certainty about such a defect, but only (though vehement or prudent) suspicion, as in *Pontifical*, Book 42, Chapter 47, paragraph 4, and *Palatinus*, page 27, paragraph 3.) "However, one is not obligated to spontaneously reveal such defects that make the marriage less desirable, but not harmful, especially if they have an attached infamy (e.g., if the bride has been corrupted by force or willingly); provided, however, that one does not simulate the contrary, either by word or deed; and when questioned, one may licitly conceal it and enter into the marriage. But if the defects are harmful, e.g., a contagious disease, a serious infamy, whether personal or of the family, it is not permissible to enter into the marriage, even if the defects occur after the betrothal, without the other party being aware of them, unless one suffers from similar defects. *Conciliaria*, *Pontifical*, *Dian.*, Part 5, Volume 4, resolution 28, where, from the *Conciliaria* and *Salm.* against *Pontifical* and others, it is inferred that a bride who has been corrupted after the betrothal can force the groom, unaware of this defect, to remain betrothed and to enter into the marriage. III. If large debts of the other party are revealed, or there is a serious danger of loss of fortune, reputation, health, poverty, etc., or if the bride cannot bring the promised dowry, or finally, if the groom begins to wander to the detriment of the bride. *Bonifacius*, cited above." (Also, *Spotorius*, number 282; *Sanchez*, Book 4, Dist. 59, paragraphs 2 and 4, and *Pontifical*, Book 42, Chapter 47, number 8, with *Conciliaria*, *Reb.* and *Tol.*, whether the dowry is promised or not. And *Spotorius* and *Pontifical* say the same if there is fear that the father will disinherit the son.) "But if, upon discovering a defect in the betrothed, the betrothed is doubtful whether, had he known it from the beginning, he would have entered into the marriage, then if that defect is considered serious and notable, it is presumed in favor of the betrothed, to whom it is free to withdraw. *Sanchez*, *Bonifacius*, *Tan.*, Volume 4, Book 4, Dist.

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65; otherwise, if the defect is slight. *Bard.*, Book 9, Chapter 44, pages 7. 864. — Question: Whether a party working has a hidden defect sufficient for annulment.

[*Latin ed. p. 54*]

When betrothed, is one bound to disclose a defect before the marriage, or after the betrothal, but before the marriage? This must be distinguished from the common case. If the defect renders the marriage harmful, such as infamy, leprosy, the French disease, or another contagious illness, one is bound to disclose it, or to refrain from the marriage, unless the other party suffers from the same defect; thus, Pont. l. 12, c. 18, n. 6; Ronc. p. 140, q. 42; Pal. p. 30, n. 5, with Salm. de matr. c. 2, p. 6, n. 99; with Diana 3, p. tr. 4, r. 287; Spor. n. 286, with Perez and Gob. (whatever they may say Sanch. lib. 4, d. 68, num. 8, and others apud Salm.). The reason is that, just as it is sinful to sell another defective goods, representing them as good, so much more is it sinful to enter into marriage with a harmful defect.

865. — If the defect does not render the marriage harmful, but merely less desirable, namely, if the bride is poor, when she is considered wealthy; unknown, when she is noble; deformed, when she is beautiful; corrupt, when she is a virgin, then it is permissible for her not to disclose the defect, but she may even, when questioned, dissimulate by giving an equivocal answer; for then she is not feigning, but concealing a hidden fault; thus, Sanch. l. 6, d. 27, n. 9; Pont. Spor. Dian. ll. cc.; Ronc. l. c.; Reg. in prac. 7; Renzi p. 437, q. 40; Croix n. 482; Pal. p. 30, n. 2, with Con. and Turr.; Salm. de matr. c. 2, p. 6, n. 97, with Dic. and Avers.; Escob. n. 324, with Hurt. and Leand. (contra Ochag. ibid. n. 322, and Conc. p. 278, n. 31). The reason is that it is already established by custom that there is no obligation to disclose such defects, and that no one is bound to publicize their own defect, if it does not harm the rights of another; for although the betrothed has the right, upon knowledge of the defect, to withdraw from the betrothal, by raising an exception due to such a defect, yet as long as he does not raise that exception, he can be compelled by the bride to enter into marriage; just as an adulteress, as long as the husband does not raise an exception due to her known adultery, can demand payment from him. Therefore, the aforementioned authors say that a bride who has been corrupted by another, even if questioned by the groom as to whether she has been known by another, may dissimulate and deny by a non-purely mental restriction, answering that she has not been corrupted, implying in general terms, or adding, as Diana states, that she may, without sin, or at least without mortal sin, use some artifice to prevent the groom from discovering that she is corrupted.

However, 4. Sporer n. 286; Pal. p. 30, n. 5; Pont. d. n. 6; and Croix n. 483, with Con. and Perez, except if the bride is pregnant from a union with another, because then there is a danger of harm to the groom, namely, that he should be obliged to support the offspring of another.

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2. Sanch. n. 44; Pont. ib.; Salm. ibid. n. 98, in fin.; Ronc. d. reg. 7; Croix n. 184; and Pal. n. 3, with Nav. Con. and Turrian, except if, without disclosure of the defect, there is a reasonable fear that it will be publicized after the marriage has begun, and serious discord will arise therefrom.

[*Latin ed. p. 55*]

There must be provisions made; for then they say that the bride is held, either to publicize the violation of the betrothal, or to desist from the marriage, because she is bound by charity both towards the betrothed and towards herself to avoid such harm. But it could be objected that charity does not seem to impose such a burdensome obligation, namely, either to suffer infamy or to remain unmarried forever. See the statements in n. 854. See also: "Ad id." To determine what causes are sufficient to discharge the obligation of betrothal, consider these two rules. The first rule: For causes arising after the betrothal, that cause is sufficient which, if it had been foreseen, would have prevented the betrothal from being contracted; for then the party who did not foresee these causes remains free; thus, generally, Sanch. l. 4. d. 62. n. 3; Pal. p. 28. n. 8; and Salm. de matr. c. 2. p. 5. n. 63, with Aversa, Led. Henr. Dic. and others. The reason is that the betrothed are considered to be bound under this condition, unless a notable change occurs, which, if foreseen, would have prevented the betrothal in the first place. The second rule: For causes unknown before the betrothal, that cause is sufficient which, if it were to arise later, would already be sufficient to dissolve the betrothal; thus, Pontius lib. 12. c. 48; Sanchez lib. 1. d. 63. n. 2; Pal. p. 29; and Salm. ibid. p. 6. n. 87, with Dic. Aversa, Leand. and the common opinion, because in such a case, a notable change is also present, which, if it had been known from the beginning, would have prevented the betrothal. Therefore, if ignorance did not cause the contract, but was present at the time, that is, if the betrothed, even knowing the prior cause, still entered into the betrothal, he will not be able to subsequently withdraw from the betrothal, because in that case, there is no notable change; thus, Pontius l. c. n. 4; Sanch. dist. 65. n. 2; Pal. n. 2; and Salm. ibid. n. 93, with Dic. Con. Leand. and Trull. 666.

"VI. If one departs without the other's consent to a distant land;" because it is considered a renunciation of one's right. Laym. l. c. Bon. "p. 6. It is certain that if the betrothed transfers his domicile to another place, or goes to a distant region, even if with the intention of returning, the bride may immediately enter into another marriage; this is expressly stated in c. De illis. 5. de spons., where it is said: 'Those who, by oath, promise to marry certain women, and afterwards, without their knowledge, leave the land, transferring themselves to other places, it is permissible for the women to enter into other betrothals.' However, if the betrothed departs to a nearby place with the intention of returning; then, if the departure is due to a necessary cause, such as illness or another serious matter, it is established

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in l. Sæpe, ff. de spons. that one should wait for the end of the matter; but if the departure is due to a voluntary cause, when the departure is within the province, it is said in l. 2. c. eod. tit. that one should wait for two years; when outside the province, for three years, according to l. 4. c. de Repud. Furthermore, it is generally said by Sanch. l. 4. dist. 54. n. 6; Bonaec. part. 6. n. 8; Spor. n. 224; Viva q. 2. art. 3. n. 2; Ronc.

[*Latin ed. p. 56*]

p. 437. q. 2. Holz. n. 250. Escob. n. 270. cum Soto, Armilla etc. ac Salm. de matr. c. 2. p. 4. n. 61. cum Dic. Gonet, et Aversa, that civil law in this matter has been corrected by canon law in the aforementioned chapter. And this is to be said (as Sanch. n. 6, Ronc. and Viva assert in their collections, with Perez against Bonac.), even if the departure was due to a necessary cause. But Palaus better states p. 23. n. 2. Pontius l. 42. c. 45. n. 4. with Canisio, that in this matter, civil law has been minimally corrected by canon law, for in the aforementioned chapter, the discussion pertains only to the one who has changed his domicile, and not to the one who has departed, intending to return. However, they rightly add that in this matter, one should not adhere to civil law; because the aforementioned laws establish a term, not so that the bride may dissolve the betrothal, since (as we said in n. 853, Qu. I.) according to civil law, formerly the will of one of the betrothed was sufficient to dissolve the betrothal, but so that the bride may withdraw, having received compensation. Therefore, it should be concluded with St. Anthony 3. p. tit. 4. c. 48. §. 4. Pont. l. c. Sanch. n. 10. and Salm. ibid. n. 62. with Con. Reb. and Dic., that if the betrothed has departed to a nearby place, one should wait until he returns; or the betrothed should be required to return within a certain time to consummate the marriage. If the betrothed delays his return for a just cause, then one should wait, at the discretion of a prudent person, as Ronc. Sporer l. c. Conc. p. 374. num. 47. and Salm. l. c. with Conc. Reb. and Dic. state. Or (which is more secure), the matter should be referred to the judgment of a judge, who, after examining the circumstances, will either warn the betrothed to return within a certain time, or will establish a deadline (especially if he has gone far away) after which the bride will be free. This is what Pontius and Ronc. assert in their collections, as does Pal. n. 3. and Salm. with the same authors. And the same is taught by Benedict XIV in Notif. 46. num. 5. with Anac. Cler. Perez, etc. and in the declaration of the Sacred Congregation of October 2, 1723, which likewise gave the same response. However, these considerations apply if no time has been specified in the betrothal for the celebration of the marriage; for if a term has been assigned, see what is to be said in numbers 867 and following. — VII. • If the betrothal is entered into with a condition, to be fulfilled at a certain time, the obligation is lifted from the one for whom the condition has not been fulfilled, so that the contract is not considered valid. Laym. n. 46. • When a term is added to the betrothal, one

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must consider whether it is added to encourage, or to make the obligation to contract marriage irrevocable, or whether it is added to terminate the obligation. The term is added to encourage when the parties agree that neither party may compel the other to fulfill the contract before that time. But the term is added to terminate when, after that time has elapsed, no obligation remains. And these conditions must be observed if the parties have expressly agreed to them in words. But in case of doubt, 4. If the words are ambiguous, when should the term be considered to have been added to encourage the obligation, and when to terminate it? It is answered with common opinion that two rules are assigned in such a case.

[*Latin ed. p. 57*]

First rule: If a term is specified from only one side, with the other side understood as negative, then it is considered to be imposed for the purpose of setting a limit; but if it is specified from both sides, then it is considered to be imposed for the purpose of completing the obligation. Second rule: If the term is imposed before the marriage contract is entered into, it is considered to be for the purpose of completing the obligation; otherwise, if it is imposed after the marriage contract has been entered into; thus, Sanch., book 4, title 53, paragraph 3; Ronc., page 137, question 3, rule 2; Renzi, page 435, question 3; and Salm., on marriage, chapter 2, page 4, paragraph 54, with the Council of Beca. Although Pontius, book 42, chapter 16, paragraph 3, states that these two rules are not universally true. However, in the case where a term is imposed to complete the obligation, if the time elapses due to the fault of one party, the other innocent party is released, even if the marriage has been promised, as is common among all, as in D. Th., book 4, title 27, question 2, article 3, section 2, and it is clear from chapter "As it is written" (Sicut), where the Pope imposed a penance on a certain groom who withdrew from the marriage contract with one woman and entered into marriage with another: "Unless," he added, "he has specified a certain term by his oath, within which he will take the aforementioned woman as his wife, and if he does not do so (note), then he has completed the marriage within the specified term." Therefore, if he did not do so, he may lawfully withdraw. 868. Doubt 2: If the term elapses due to the fault of, for example, the groom, can the bride withdraw from the marriage contract if he has culpably failed to enter into marriage, being justly detained by an impediment? The first opinion denies this, and this is held by Pontius, book 42, chapter 16, paragraph 4; Bonac., page 6, paragraph 6, with Reg. Viva, question 2, article 3, paragraph 3; and Sanch., book 4, title 53, paragraph 7, with Palud., Gomez, etc., ibid., paragraph 16; also, Guttier., in Palud., page 24, paragraph 7; and Trullench., in Salm., on marriage, chapter 2, page 4, paragraph 56. The reason is that it is not just that one should be deprived of their right, who is justly hindered from fulfilling their promises, as in book 4, chapter on Annuls, exception: "One who is legitimately hindered

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does not lose their right by the passage of time." They also cite the aforementioned chapter "As it is written" (Sicut) as proof; but this text more truly proves the opposite, as we will soon see. However, Bonac. and Viva, in their commentaries, and others, note that in order for the innocent party to be released from the marriage contract, the delay of the other party must be so great that, considering the circumstances, the innocent party may reasonably be considered to be guilty of mortal sin. Also, Pontius points out that if the marriage is delayed for a long time due to an impediment of one party, the other party may rightly go to a judge, so that the hindered party may be warned to set a new term, after which the other party will be entirely free. The second opinion, which is more common and more probable, affirms this, and this is held by Laym., chapter 2, paragraph 47; Palud., page 24, paragraph 8; Navar., chapter 22, paragraph 27, case 44; Coninck, book 27, book 6, paragraph 47; Salm., ibid., paragraph 57; Conc., page 273, paragraph 16; and Ronc., chapter 3, question 3, rule 2. The reason is that the term is imposed for this purpose, so that the party who is ready does not remain without marriage for a long time, otherwise the time specified would be useless. This opinion is clearly proven by the aforementioned text in chapter "As it is written" (Sicut), which the opposing party wrongly twists to support their opinion; for in that case,

[*Latin ed. p. 58*]

(as we have said) there was a case in which a certain man, after having entered into a betrothal with one woman, entered into marriage with another; therefore, the Pontiff decreed that if, through his fault, it happened that, after the betrothal had been entered into with the first woman, the prescribed time had elapsed, he should do penance. Hence, it was declared from the text that if, through his fault, it did not happen that the marriage was contracted within the prescribed time, he could lawfully enter into marriage with another after the time had elapsed. Therefore, if that man could lawfully enter into marriage with the second woman, because, through his fault, it did not happen that the marriage was contracted with the first woman within the prescribed time, it is presumed that he remained entirely free from the obligation of the betrothal after the time had elapsed. Therefore, it is concluded that when the prescribed time has elapsed, the obligation of the betrothal completely ceases on the part that was already prepared for the marriage.

However, in Doubt 3: Does the part that culpably delayed also remain free from the obligation of the betrothal after the time has elapsed? The more common opinion denies this, and says that only the part that did not delay remains free; thus, the Pontiff, in book 12, title 16, number 4; Layman, chapter 2, number 17; Paludanus, page 24, number 8; Navar, chapter 22, number 27; Concilii, decree 6, number 47; Salmeron, on marriage, chapter 2, page 4, number 55; and Sanchez, book 4, title 53, number 7, with Palu-

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danus, etc. The reason is that no one should profit from his own crime. It is certain, however, with the Pontiff, in the aforementioned place, and with Sanchez, number 6, that if both parties delayed, so that the marriage was not celebrated within the prescribed time, the betrothal is dissolved on both sides. The second opinion, however, affirms that, after the time has elapsed, both parties remain free, even the one who was at fault: thus, Roncaglia, page 137, question 3, response 2, in fine; Concilii, page 273, number 16; and this is expressly held by St. Thomas in the 4th part, title 27, question 2, article 3, ad 2, where he says: "If, through either party, it happened that the marriage was not completed, he must do penance for the sin of breaking the promise or oath, and he may enter into marriage with another, if he wishes, with the judgment of the Church." The reason seems to be that since the time was set to end the obligation, when that time has elapsed, the obligation ceases; since the time is an intrinsic condition attached to the contract, if that condition is lacking, even through the fault of one of the contracting parties, he remains free; and it does not hinder that he then profits from his own fault, because the law of the contract does not regard fault, but the lack of the condition, as in the Regius juramenta, in 6: "A contract is understood to take its law from its condition." The first opinion is indeed much more common, and seems much more probable to me; but this second opinion is not without its probability, especially because of the authority of St. Thomas.

869. — "VIII. Betrothals are dissolved, even if they have been made with an oath, by the reception of holy orders, or by one of the parties entering into religion, or by a vow to enter into religion." Layman, in the aforementioned place; Bonaventure, page 5. It does not hinder, if afterwards...

[*Latin ed. p. 59*]

The world returns, as taught by Sanch. l. 4. d. 25. Although the Preacher Fill. and others may believe that one party is bound by prior betrothals to such an extent that even damages must be compensated to the betrothed, if any have been suffered. Therefore, one could not enter religion if the betrothed had been abandoned, nor could damages be compensated by any means other than through marriage. See Diana p. 3. t. 4. r. 207. Bon. loc. cit. IX. It is probable that this can also be resolved through a simple vow of chastity, as taught by Suarez, Azor, and others, since this pertains to a better good; although Fill., Sanch. Con. and others teach the contrary, because God does not accept a promise of something given to another, and to the detriment of another. Therefore, in the external forum, one is often compelled to either maintain fidelity or enter religion. Meanwhile, after such a vow, the other party is given the right to seek a resolution of the betrothal, since the one who makes the vow has relinquished their right, and is considered to have renounced their own just claim. See Bon. p. 6. n. 13. 870.

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Hence, a distinction must be made between a religious profession, the reception of holy orders, and a vow of religion, or of orders, or of chastity. And I. Regarding religious profession, there is doubt as to whether the betrothal contracted before the profession is dissolved by entering religion on the part of one of the betrothed. There are three opinions. The first opinion asserts that the betrothal is dissolved by entry into religion on neither side, as stated by Cov., Durand, Armill. etc., apud Salm. de matr. c. 2. p. 2. n. 49. The reason is that just as a valid marriage is not dissolved by entry, but only by profession, as stated in c. 2. de convers. conjug., so too it should be said of betrothals; but this opinion does not seem sufficiently probable. The second opinion is more common, and to which I adhere, and which is held by Laym. c. 2. n. 2. Spor. n. 148. with the common opinion, as stated by Croix n. 187. Pal. p. 48. n. 3. Pontius l. 22. c. 10. n. 4. with Reb. and Gabr. Viva q. 2. art. 4. n. 4. with Con. Perez, and Henr. and Salm. de matr. c. 2. p. 2. n. 21. with Gonet, Vill. and Led., which states that the betrothal is dissolved only on the part of the one remaining in the world, because the other, by entering religion, is considered to have relinquished their right; and because a notable change occurs on their part, since it would be considered disgraceful to marry someone who has abandoned religion; but it is not dissolved on the part of the one entering, if they later return to the world; because by entering, they are not rendered incapable of contracting marriage, as they would be by profession. The third opinion, which is held by Bus. n. ant. Sanch. l. 4. d. 42. n. 2. and 5. Tol. l. 7. c. 21. Bon. p. 5. n. 2. with Conc. Fill. Henr. etc., as well as Becan. and Dic. apud Salm. ibid. n. 20., states that the betrothal is dissolved on the part of both parties. The reason is that just as novitiate relates to profession, so too do betrothals relate to marriage: just as a valid marriage is dissolved by profession on the part of both parties, as declared in c. 2. de Conversione conjug., so too betrothals are dissolved by entry.

[*Latin ed. p. 60*]

Some maintain this, but it is objected to this reasoning that such a privilege is granted by divine law (as declared by the Church) only to the religious state as a state of perfection; but that, by entering into a betrothal, no legal right is acquired: and indeed, it would not be fitting that one should enjoy the privilege granted to the religious state, who then basely retreats from it. The second reason for this opinion is that entry into religion, with the intention of persevering, already releases the one making the vow from the vow of religion, so that, if afterwards he withdraws, having experienced that religion is not suitable for his strength, he remains free from the vow; therefore, a fortiori, he is released from the obligation of betrothal, which is of lesser obligation than the vow of religion. But this reasoning does not persuade, for the one making the vow is released by entry because he has already fulfilled his obligation; for the vow is understood to be made under

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the condition that religion is suitable for him; on the contrary, the betrothed is in no way fulfilling the obligation of betrothal by entering into religion; and therefore, if he withdraws from it, he rightly remains bound by the same obligation. Hence, the second opinion seems to me absolutely more probable.

Doubt 2: Whether, if the betrothal is confirmed by an oath, the betrothed is bound to celebrate marriage before entering religion. The first opinion affirms this, and this is held by Scotus, Navar, and Medina, citing Pope Leo XII, book 12, chapter 10, number 10, and by Rebellin and Vega, citing Salmeron, on marriage, chapter 2, page 2, number 17. They prove this from canon "Commissum 16" on betrothals, where it is said that it is safer for the betrothed in that case to first enter into marriage, and then, if he wishes, to enter religion before consummation; in the words of the text: "It is safer for him (having kept the oath of religion) first to contract marriage, and afterwards, if he chooses, to enter religion." The second opinion, however, is the most common, and, speaking by itself, is truer, and is held by Medina, citing Pope Leo XII, book 1, title 43, number 3; Palafox, page 16, number 2; Bonaventure, page 5, number 4; Peter of Valencia, volume 4, page 279; Vivar, question 2, article 4, number 5; Spotorius, number 246; Holzmüller, number 240; and Salmeron, ibid., number 18, with the Congregation. The reason is, first, that an oath is always considered to be made under the condition that a more perfect state is chosen; secondly, that an oath follows the nature of the contract, from canon "Quernadmodum 25" on oaths, where it is said that he who has sworn to marry a woman can repel her, because of subsequent fornication, or deformity; therefore, if betrothals without an oath do not obligate to contract marriage before entering religion, neither do those confirmed by an oath.

However, the aforementioned authors rightly respond to the opposing text, that there, since the betrothed was not certainly determined to enter, but only aspired to do so, as is expressed there, therefore the Pope, lest he be held guilty of perjury by not entering religion, nor by celebrating marriage at the appointed time, said that it was safer to contract marriage, and then, if he wished, to enter religion; therefore, if the betrothed had entered religion before the appointed time had elapsed, or had deliberately decided to enter, he would certainly not be bound, nor could he be.

[*Latin ed. p. 61*]

To enter into marriage without a grave reason, as well-known authorities observe (Sanchez, *l. 7*; Spotorno, *l., cap.*; Pontedera, *l. 12, cap. 2, n. 2), along with Soto and Bonaventure (*p. 5, n. 11*) and Sylvestri, Guttieri, and Rodriguez against Cajetan and Leander, because it inflicts a grave injury upon the bride, forcing her to wait for a year for her intended to fulfill his profession. I speak of this in its own right, for it is rightly added by Bonaventure (*Spotorno, l., cap.*) and Holzmüller (*ll., cc.*) and Ponted-

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era (*de cap. 40, n. 13*) with Suarez, that the bridegroom is obligated to celebrate the marriage before entering into religious life, if this is necessary to legitimize offspring, to repair scandal, or to provide for the honor of the bride, unless this can be accomplished in another way. And in this case, even after the celebration of the marriage, it is not permitted for the bridegroom to enter into religious life, leaving the marriage unconsummated; for he cannot then abandon his wife, who, because of the infamy, would not be able to find another marriage, as rightly noted by Busembacher (*l. 5, n. 65*, see *v. 874*).

II. It is also certain that the reception of holy orders dissolves betrothal, but not a valid marriage; this is the opinion of all, including Sanchez (*l. 1, dist. 47, n. 1*), Pontedera (*l. 1, cap. 11, n. 2*), and the Council (*p. 270, n. 6*), and others throughout. This is evident from the *Extravagantes Antiquae* concerning vows, where it is stated: "It is to be considered that a vow, through the reception of holy orders, is effective in preventing marriage, etc."

However, it is doubted whether one sins who receives holy orders, unknowingly or unwillingly, concerning the betrothed. The first opinion affirms that one does sin gravely, and this is held by Sanchez (*l., cap., n. 3*), Paleari (*p. 49, n. 2*), Roncaglia (*c. 3, q. 5, r. 2*), and Croia (*l. 6, p. 3, n. 200*) with Concinius and Perez. The reason is that it is not permitted by law for holy orders to dissolve betrothal, as is granted to the religious state; indeed, the law itself prohibits acting to the detriment of another, as is stated in *c. un. de Oblig. ad ratioe. non ordin.*. The second opinion, which is no less probable, denies this, and it is held by Pontedera (*l. 12, cap. 11, n. 3*), Navarreli (*c. 22, n. 25*), Concinius (*de cap. 260, n. 6*), Bonaventure (*p. 5, n. 20*) with Guttieri and Cordes, Salmeron (*de matr., c. 2, p. 2, n. 26*) with Aversa, Diana, and Henry, and Escobar (*n. 237*) with Soto, Sylvestri, and Vega. The reason is that in the promise of betrothal, there is always a condition, unless a better state is chosen; for it is not just that one should be prevented from dedicating oneself to the Creator in order to serve creation. The opposing text does not object, for there it considers not so much the detriment to a third party, as the scandal to the Church, as is expressed there; moreover, in our case, no detriment is caused to anyone, since the bridegroom is exercising his right. This seems to be confirmed by the same *Extravagantes* cited above, where it is only prohibited to receive holy orders after a marriage has been contracted, but not after betrothal.

872. — Doubt 2. Whether the reception of minor orders dissolves betrothal? The first opinion affirms this, and it is held by Roncaglia (*p. 138, q. 5, r. 1*).

[*Latin ed. p. 62*]

Sp. n. 256. Some, following Tanner and Gobinus, argue that a change of spouse is permissible when the lesser orders are entered, because it is

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judged that the person did not intend to obligate themselves to marriage with that person; and because it is considered that the person cedes their right when they accept a state incompatible with marriage. However, a more common and truer opinion holds that this is not the case, as stated by Sanchez, book 1, district 47, number 3, with Palud. Wig. tr. 16, number 29; Pont. book 12, chapter 41, number 1; Salm. de matr. chapter 2, page 2, number 25; and Escob. number 234. The reason is that the lesser orders are not, in themselves, incompatible with marriage, since one can be a married cleric, as is clear from chapters 1 and 2 of "De Clericis Conjugatis," 873.

III. Regarding the vow to enter religion, to receive the sacred orders, or to observe chastity, it is certain that 1. if a person vows to enter religion, they may lawfully do so and ought to do so, and are not bound by their betrothal, if they truly desire to become a religious; for if they do not enter, they are bound, as we said above, number 870. It is certain 2. that, according to Sanchez, book 4, district 46, number 5, and district 47, number 4; Pont. book 12, chapter 12, number 4; Ronc. page 438, question 5, replies 3, 4, and 5; Viva, question 2, article 4, number 8; Salm. ibid. numbers 29 and 34, and others, that betrothal is dissolved by such vows on the part of the one who makes the vow, because it is judged that the person, by making the vow, renounces the betrothal. It is certain 3. that if a person, after betrothal, makes a vow not only to enter religion, but also to profess religion, then the betrothal is dissolved on the part of both parties; because the person then becomes entirely incapable of contracting marriage, as rightly stated by Salm. cited, number 29, and Viva, d. a. 4, in fine.

But 4. it is doubtful whether betrothal is dissolved by a vow to observe chastity, or to receive the sacred orders, even on the part of the one who makes the vow? If the vow precedes the betrothal, it is certain that the betrothal is invalid, because the promise, being about something illicit, does not obligate; therefore, it is doubtful if it follows. The first opinion denies this, and this is held by Nav. chapter 22, number 27; Laym. chapter 2, number 6; Pal. page 20, number 6; Cabass. volume 4, book 3, chapter 47, number 20; Ronc. page 438, question 5, replies 4 and 5; Holzm. number 236; Sp. number 258; Viva, question 2, article 4, number 8; and Sanchez, book 1, district 46, number 9, and district 47, number 3, with S. Anton. Arm. Sylv. Cord. etc., as well as Tol. Con. Hurt. Rill. Bec. Reb. etc., in Escob. numbers 232 and 235. The reason is that God does not accept a promise of something that has been promised to another, and He does not grant any right by which betrothal is dissolved by these vows. They also object to the text in chapter "Veniens," which states that if a cleric or a religious has vowed, where there was a case in which a certain woman had entered into betrothal with a certain man, whose cruelty (as was said) afterwards frightened her, and she made a vow of chastity; upon hearing this, the man entered into marriage with another. Pope Alexander III, when consulted, responded: "We command that (the woman who had requested permission to marry)

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if she has not proceeded further, she should be granted a dispensation on the condition..."

[*Latin ed. p. 63*]

If she has broken a vow, and has not made suitable amends for the violation of that vow, and she does not delay in seeking permission to marry in the Lord, this text is cited by doctors of both opinions to support their arguments, but in truth, it does not conclusively favor either side. Those who, according to their opinion, which we will soon review, infer from these words that the broken vow was valid, and therefore required a dispensation; consequently, they argue that a simple vow of chastity, if valid, already dissolves the betrothal. However, Pal. Laym, and Holzm. with the Glossary, rightly respond in *verb. Vota violata*, that this proves nothing other than that the vow was sufficiently valid with respect to marriage with another person, which the woman intended; and therefore, the Pope declared her guilty of violating the vow; but it does not at all prove that it was valid with respect to the man with whom she had previously entered into betrothal. The second opinion, on the other hand, affirms that the betrothal is dissolved by a simple vow, and this is held by Pontius, *l. 12, c. 44, n. 3*, and *c. 12, n. 4*; Petrocor., *t. 4, p. 280, v. Instabit*; Suar., *l. 2, de voto, c. 4, n. 43*; Cono., *p. 270, n. 7 and 9*, with Gonet and Led.; Azor, *l. 14, c. 21, qu. 10*, with Rich. Ang. and Major; Essob., *n. 233 and 237*, with Vasq. and Diana, and Bon., *p. 5, n. 43*, with Sot., Nald., Gutt., Henr., and Rodr.; also Cajet., Turr., Præpos., Lop., Veraer., Manuel, etc., *ap. Sanch., l. 1, d. 46, n. 7*, who calls it "most probable," and others call it "commonly probable" and "safe," *Salm. de matr., c. 2, p. 2, n. 33*; Pal., *p. 20, n. 3 and 6*; Cabas., *l. c.* and Laym., *n. 7*. And Dom. Th. Suppl. absolutely teaches in *qu. 52, art. 4, ad I*: "Because of a simple vow, betrothals are dissolved." The reason given by the Doctor is that when two obligations concur, the stronger one must be preferred. Another reason, which is more commonly given, is that a promise of betrothal is always considered to be made under the condition that a better state of life is chosen. They say that this applies even if the betrothal has been sworn, because (as has been said many times above) an oath follows the nature of the contract. And there is also a decision of the Holy See, *Conc.*, *ap. Pitton, de matr., n. 2513*, published on March 5, 1704, in which it was stated that a vow of chastity, or to receive the sacred orders, by choosing a better state of life, invalidates betrothals, even those confirmed by an oath. They also argue that the aforementioned text in chapter "Veniens," which speaks of a lie told in faith, does not apply here, because opponents argue that the woman illicitly vowed chastity after the betrothal had been contracted; but it is probably responded, as Pontius says in the cited passage, *n. 5*, that the Pope said this because he was referring to the external forum; for since the vow had been secret, and the betrothal public, it was known about these things, but not about the vow; therefore,

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it was justly considered that faith had been violated in the external forum. Furthermore, Petrocor. and Coneina respond, and perhaps better, that the Pope declared the woman guilty of lying in faith, not because she had vowed in prejudice of the betrothal, but because she did so in fraud of it, namely, to evade the betrothal and then marry another with a dispensation from the vow, which she was already seeking. Both opinions are probable. However, Coneina rightly says...

[*Latin ed. p. 64*]

40. If the bridegroom were to make a vow to elude the bride, that is, by requesting a dispensation after the vow to marry another, he would sin gravely, and he would be obligated to fulfill the prior betrothal. Furthermore, it is more probable, as stated by Salm. de matr. c. 2, p. 2, n. 35, with Reb. and Aversa, that even if the bridegroom vowed chastity without the intention of eluding the bride, if he later obtains a dispensation from the vow, he will not be able to marry another, because the prior obligation is not entirely extinguished, but only suspended, until chastity is observed; but Bon. n. 16 and Sanch. d. 56, n. 8, not improbably deny this, because the prior betrothal is entirely fulfilled by the vow; therefore, when that obligation is entirely extinguished, it does not revive through a dispensation from the vow; and the Council agrees with this, although it adds that it is honorable for the bridegroom to take the bride, in order to avoid scandals and murmurs. 874.— Doubt 2. To what is a man bound who has vowed religious life, orders, or chastity, and afterwards knew a woman under the promise of marriage? See the statements in l. 4, n. 649, where we stated, with Less., Sanch., Lugo, Vasq., Con., etc. (against Laym., Salm., etc.), that if the woman was unaware of the vow, despite the vow, he is obligated to marry her, whether her promise was true or feigned; and even if the woman was aware of the vow, it is probable that he is obligated to seek a dispensation. But, in the case where the woman was unaware of the vow, can the bridegroom take her without a dispensation? Salm. de rest. c. 3, p. 1, §. 1, n. 22, Lugo de just. dist. 12, n. 41, and Pont. l. 6, c. 12, n. 8, deny this, because, since it is easily possible, both are obligated to fulfill their respective obligations. But Tamb. Dec. l. 5, n. 36, and Spor. de matr. cap. 3, n. 604, and also Less. Trull. and Candid. apud Salm. loc. c., deny this, because then the obligation of the vow ceases, or is entirely suspended, since it is truly not possible for both to fulfill their obligations, and the obligation of entering into marriage prevails (as we have said). However, if marriage is contracted in that case, the man will not be able to demand the debt; and therefore, Tamb. rightly adds, with Less., that a dispensation must be obtained, so that he may even be able to demand it. 875.— X. Through a valid marriage, the betrothal is dissolved, at least with regard to the one who did not contract the marriage; but with regard to the one who did contract the marriage, the obligation is not extinguished, if the other party

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waits, but is suspended, and upon the dissolution of that marriage, he is bound to fulfill the prior betrothal, as taught by Pont., contrary to Sanch., who wants it to be entirely dissolved. See Dian. p. 3, t. 4, r. 209. "It is asked, whether a subsequent marriage entirely dissolves prior betrothals? It is certain that, during the marriage that follows the betrothal with another, the obligation of the former ceases, according to c. Si inter, despons. etc. 1. de spons. duor. It is doubtful whether, after the dissolution by the death of the spouse, the obligation of the prior betrothal remains? The first opinion denies this, and Bon. p. 2, n. 1, Laym. c. 2, in fine, Wigandt tr. 16, n. 25, Conc. p. 272, n. 43 (who inclines towards this), Escob. n. 241, with Bec., Fill., Henr., Rodr., Vill., Machad., and Sanch., hold this opinion.

[*Latin ed. p. 65*]

l. 4. d. 48. n. 3. with Palud. Manuel. Gabr. etc. with St. Bonaventure, who says: "Those who enter into betrothal, and those who begin marriage, are not further bound." The reason is that once an obligation is extinguished, it never revives, according to c. Quæris, de consec. dist. 4. The second opinion, however, seems to me absolutely more probable, and this is held by Pont. l. 12. c. 13. n. 4. Ronc. p. 138. q. 6. r. 4. Pal. p. 21. n. 4. with Conc. Led. Adriano etc. and Salm. de matr. c. 2. p. 3. n. 39, who, although they cite a probable argument to the contrary, consider this one to be truer, along with Gonet, Sylvio, Leand. Vega, and others. The reason is that it is not proven by any law that betrothal is completely annulled by subsequent marriage; not by positive law, because this is not stated anywhere; not by natural law, because the obligation of betrothal, while marriage with that person has begun, certainly does not bind for that time, and therefore it is suspended, but not extinguished; as is clear in the case of someone who, after making a vow of religion, consummates a marriage, for he would still be bound to fulfill his vow. It is also not valid to say with Sanch. that this happens when the subsequent bond is of a different nature, and not when the bonds are of the same nature, as are marriage and betrothal; for it is answered that it does not matter whether the subsequent obligation is of the same or different nature, as long as the first obligation can always be fulfilled; only the condition of the subsequent bond must be considered: if it is perpetual, then the first obligation is extinguished; but if it is temporal, then it is suspended until it can be fulfilled when the subsequent bond ceases, as if someone were to sell a horse to one person, and then sell and deliver it to another person, in the case where the horse returns to the ownership of the first person, he is certainly bound to deliver it to the first buyer, as can be inferred from l. 15. Cod. de rei vend. 876. — XI. If a new inheritance comes to the betrothed, so that the betrothed is now unequal, he does not therefore have the right to withdraw; because he was not deceived in the condition of the betrothal, in which no change has been made. The same is true if a new inheritance comes to the betrothed. Sanch. Con. Regin. Dian.

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p. 3. t. 4. r. 286. Thus, as is commonly held by Pal. p. 28. n. 5. Sanch. l. 4. d. 59. n. 7. Conc. p. 276. n. 23. Ronc. p. 139. q. 8. v. Aliqui, and Escob. n. 306. with Gutt. But Hurt. Trull. Leand. and Ochagav. contradict this in the same place, Escob. n. 304. (who considers it probable), because in such a case, a notable change in circumstances has already occurred. According to the first opinion, Croiæ n. 160. says that if someone enters into betrothal with one person, and then is offered marriage with another person who is richer, he cannot abandon the first, because no change has been made in the condition of the first. But if the quality of the second betrothal were significantly better, I would not dare to completely condemn the betrothed if he wished to enter into betrothal with her; although in this case, the status of the betrothal, or of betrothals, does not change, yet (as DD. commonly say) betrothals only bind if things are in the same state.

[*Latin ed. p. 66*]

Those who are betrothed are bound; therefore, just as the bridegroom would be bound to fulfill his obligations, incurring great harm if he did not, so too, it may seem to some that one is bound in a similar way, with the loss of great profit; for such a loss is equivalent to a serious harm, as stated in the first book, chapter concerning contracts, that for this reason, etc., according to the aforementioned book, 4, number 304. And so, I find in the life of Saint John of Capistrano, chapter 9, that several theologians have felt this way in such cases, although Saint John himself held the opposite opinion, from which I would never dare to deviate.

877. — The question arises regarding the completion of this point: Is the disagreement of the parents a cause for dissolving the betrothal? Menochius states this in Croia, number 404. And so, all those who say that the Council of Trent, in session 24, chapter 4, has already declared that such marriages, celebrated without the consent of the parents, are prohibited by the Church, should also think so, as stated by Petrocor, volume 4, page 413; Roncatius, page 269, question 3; and Pagnanus, Gonet, Sayr, and Marchant, in Episcopus Muscettola's Dissertation on children, etc., page 10, number 41, who therefore infer from the aforementioned text that the disagreement of the parents is a true impediment to marriage. But commonly, this is denied by Croia in the same place, with Gabriel Sanchius, book 4, title 14, number 2; Layman, chapter 4, number 14; Holzmüller, pages 167 and 287, with the common opinion, as testified by Elbel, page 368, number 9; also with the common opinion, Sporer, number 202; and Bossuet, chapter 41, number 106. These say that the betrothal of children cannot be broken solely on the basis that it was entered into without the consent of the parents, because their consent is not required by necessity, but only by law. However, they make an exception if a great scandal is feared from such a marriage, because the virtue of justice cannot obligate one to an act that cannot be performed without sin; thus,

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Layman, in the aforementioned book. Indeed, Navar, chapter 16, number 18; Holzmüller, numbers 167 and 266; and Sanchius, in the aforementioned book, with Cordes, Guttmann, and Lophart, also say this. And Sanchius adds, with Lophart, that this holds true even if there is no disparity between the parties. However, Sanchius and Holzmüller caution that this scandal must be carefully considered; often, they say, threats and the dangers of discord are exaggerated, which, after the marriage has been contracted, easily cease, and the minds are reconciled.

But returning to the question, I believe it is necessary to say, as Roncatius states, page 140, question 9, number 4, citing Layman and Guttmann, that if the father unjustly disagrees with such a marriage, the son cannot withdraw from the betrothal, and both the son and the father would sin if they wished to dissolve it. Conversely, if the father justly objects, namely, if the marriage would lead to dishonor of the family, then those betrothals are not binding, since no one can be obligated to carry out an unjust act. Layman and Sanchius also say this, in the aforementioned book, with others in common opinion, if great scandals are likely to arise from such a marriage. It is also possible, Roncatius adds (number 2), for the son to dissolve the betrothal if the father justly threatens disinheritance, and I would also add if unjustly, because all betrothals are understood to be entered into (as we said in number 863) with this condition, if no such change occurs, which would make it burdensome to enter into marriage.

[*Latin ed. p. 67*]

877. — Question. If a dowry has not been paid, it is not necessary to demand it, unless it was previously stipulated; otherwise, the contracting party is considered to have rightfully relinquished his right to it.

878. — Response. In the aforementioned cases, when they are manifest, the authority of a judge is not required to dissolve the betrothal; otherwise, it is required. However, if the betrothed man, knowing his right to withdraw, nevertheless has carnal knowledge of the betrothed woman, he is considered to have tacitly renounced his right and ratified the betrothal. Laym. c. 1. n. 23.

Question. Is the authority of a judge always required to dissolve a betrothal?

Response. It is certain that if the betrothal is public, and the cause is public and certain, the authority of a judge is not required, and the same applies if the betrothal is private, and the cause is private; thus, Sanch. l. 1. d. 69. n. 3. Pont. l. 42. c. 48. in fin. Nav. c. 22. n. 28. Holzm. n. 277. and Pal. p. 31. n. 1. with Sylv. Val. Gutt. and Reb. It is certain that if the cause is doubtful, either in law or in fact, the authority of a judge is absolutely required. Sanch. n. 8. Holzm. and Palud. with Gutt. l. c. When the betrothal is public, and the cause is private, the authority of a judge is also required; but not under a serious penalty, unless a grave scandal is feared. Pontius c. 18. n. 8. Holzm.

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l. c. Pal. n. 2. with Nav. Lop. and Gutt. ac. Sanch. n. 6. with Sylv. An. and Vega. If the cause cannot be proven before a judge, even a slight authority of a judge is not required, as stated by Sanch. n. 7. with Palud. and Henr. However, if the defect of one party can already be proven, but is hidden, the innocent party must warn the other that he will reveal the defect, and if the other party does not agree to the dissolution of the betrothal, he may lawfully bring the defect before a judge; as stated by Laym. c. 2. n. 42. Pont. n. 8. Sanch. l. 1. d. 70. n. 2. and Pal. n. 4. Con. and Reb.

Question. What proof is required to dissolve a betrothal?

It must be distinguished: If it is a question of proving an impediment, whether it is a diriment impediment or an impediment, both in the internal forum and in the external forum, the testimony of one sworn witness is sufficient, according to c. Super eod. de test. et attest., even if the witness is a criminal and has not been summoned, but has been presented by a party; and even if he testifies secretly, and without revealing his name: thus, Sanchez l. 1. d. 71. n. 2. 3. and 4. Holzm. n. 277. Viva q. 2. art. 9. n. 1. Croica n. 245. and 217. Pal. p. 32. n. 3. with Gutt. and Salm. de matr. n. 2. p. 7. n. 110. with Aversa, and Coninc. And this is true, even if the betrothal has been ratified, as more truly held by Sanch. n. 8. Salm. ibid. n. 141. with Cov. Gutt. Trull. Aversa and Gabr. ac Pal. n. 6. (contra Palud. and Lop. ib. n. 5.), because the testimony of a witness who has seen and sworn is more probative than reputation, which certainly suffices to dissolve even ratified betrothals. See the statement in n. 997.

Question. If it is a question of proving another cause, which is not an impediment, but only something that gives the other party the right to withdraw, such as deformity, fornication of the betrothed woman, etc., then, with regard to the external forum, at least two trustworthy witnesses are required to testify under oath, as some say and it is commonly held, as follows:

[*Latin ed. p. 68*]

Sanch. n. 7. Pal. n. 8. Laym. c. 2. n. 12. et Salm. ibid. n. 114. cum Con. Gutt. Trull. et Gabr. Because (as they say) in chapters *Veniens* and *In omni*, concerning witnesses, two witnesses are required, when the matter pertains to the prejudice of a third party. But Palud and Aversa, apud Salm. ibid. n. 115. (who, with the Council of Trull, consider this opinion probable), say that one witness of worthy faith is sufficient, because it is difficult to compel a man to lead away a bride, whom some worthy person has heard, and who can prudently suspect that she has been unchaste. And indeed, this opinion seems to me quite probable, when speaking of the fornication of the bride, since the matter pertains to the perpetual bond of marriage, and therefore, because of such suspicion, a man can prudently fear that an unhappy outcome will result from this marriage. And Laymann and Palud, in their works, explicitly consent to this opinion, saying

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that, if there is a probable fear of an unhappy outcome, a man can lawfully withdraw from the betrothal. As for the internal forum, the Doctors agree with Sanch. l. 1. d. 73. n. 2. Pal. n. 8. Croiæ n. 215. cum Gobat. et Salm. de matr. c. 2. p. 7. n. 408. cum Con. Aversa, and the opinion is that one witness of worthy faith, not suspected of lying, and testifying from certain knowledge, is sufficient to dissolve the betrothal; or even a probable opinion of a sufficient cause for dissolution, as Sanch. lib. 1. d. 69. n. 9. Croiæ n. 217. and Viva q. 2. a. 9. n. 1. state. From this, Viva and Sanch. with Lopez, ibid., add that if a learned man affirms that there is a sufficient cause, the innocent party can lawfully withdraw.

CHAPTER II. CONCERNING MARRIAGE ITSELF.

DOUBT I. What is its matter, form, and minister?

879 What is marriage? And in what does its essence consist?

880 What is the matter of the sacrament of marriage?

881 For what purpose is it licit to marry?

882 Three purposes are distinguished. Doubt 1. Is it licit to marry principally for the remedy of concupiscence?

883 Is it licit for external purposes?

885 How do the contracting parties sin mortally?

886 What is required to contract marriage through a procurator?

886 What if, he who gave the mandate without the intention of contracting, ratifies the mandate before the marriage is contracted?

887 What kind of consent is sufficient to contract marriage? What if someone is deceived? Are words necessary for validity?

888 Are words necessary by divine law?

889 Is the giving of a ring, or the delivery of the bride, sufficient to contract marriage?

890 Is a conditional consent sufficient?

891 What if the condition is necessary, or scandalous, or contrary to the essence of marriage?

[*Latin ed. p. 69*]

892 What if a condition is added, if the father has consented? Doubt 1. What if the father is deceased? 893 Doubt 2. What if the father initially dissents, and then consents? 894 Doubt 3. What if, at the time of the condition, the father was dead? 895 Is a new consent required to fulfill the condition? 896 In what does the condition differ from a demonstration, a cause, a manner, and a day? 897 Dissertation on the minister and the form of marriage. 898 Objections are answered. 899 Conclusions based on our opinion. 879. — ANSWER. It is a sacrament among the baptized, by

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which a man and a woman legitimately give each other their bodies for a lifelong union, for the purpose of procreation, and as a remedy for lust. The matter of this sacrament is the mutual consent expressed by external signs, insofar as it has the nature of a tradition. The form, however, is the same consent, insofar as it has the nature of acceptance. Suar. tr. 3. d. 2. s. 4. a. 1. Sanch. Vasq. The minister is not a priest, but the contracting parties themselves, because they provide the matter and the form. Furthermore, marriage is said to be valid when it has been contracted, even if carnal union has not followed; it is said to be consummated when carnal union has followed. Marriage is said to be from the office of a mother, as St. Thomas says, or as a mother is made, as St. Augustine says. Before the coming of Christ, marriage had only the force of a contract, but after Christ, it was raised to the nature of a sacrament. It is a matter of faith that marriage is a sacrament, as defined by the Council of Trent, session 24, chapter 4, from the words of the Apostle (Ephesians 5:32): "This is a great sacrament: but I speak in Christ and in the church." Therefore, marriage, as a sacrament, signifies the spiritual union between Christ and the Church. In marriage, considered both as a contract and as a sacrament, three things are considered: namely, the contractual aspect, the perpetual bond of souls with the obligation to render due service, and carnal union. This third element, although the other two relate to it, is not an essential part of marriage, because marriage can exist perfectly well without carnal union. Therefore, the essence of marriage, properly speaking, consists in the conjugal bond, which can never be dissolved by itself. 880. — The question is asked, what is the matter, and the form, and who is the minister of the sacrament of marriage? It is commonly held that the ministers of this sacrament are the contracting parties themselves, and the form is the very words of their consent, as we will demonstrate in a brief dissertation that we will present at the end of this Doubt, from number 897. As for the matter, the Doctors disagree more, as Sanch. de matr. 1. 2. d. 5. enumerates six opinions, and the Pontificalis eod. tit. 1. 4. c. 7 enumerates seven. However, two are more widely accepted.

[*Latin ed. p. 70*]

The first opinion, held by Busembach, as mentioned above, and by Sanch. l. e. n. 6, Salm. tr. 9, c. 3, p. 3, dub. 2, n. 63, Ronc. p. 143, q. 4, r. 1, and many others among them, states: "The words of the spouses, insofar as they express the delivery of bodies, are the matter; insofar as they express acceptance, they are the form."

The second opinion, to which I adhere more closely, and which is taught by St. Antoninus, 3, p., tit. 4, c. 2, §. Ante, Petroc. t. 4, p. 303, q. 2, Frassen. t. 12, p. 139, concl. 4, Abelly p. 200, q. 1, Holzm. t. 2, p. 321, n. 316, Laym. de matr. o. 2, n. 3, with Palud. and P. Soto, and Pont. lib. 4, c. 7, with St. Bonaventure, Gerson, Vasquez, Adrian, Comit., and others, states: "The

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remote matter of this sacrament is the bodies of the contracting parties, to be mutually delivered, or the mutual right in the body of the other; the proximate matter is the very delivery of this right in the bodies, effected by the words or signs expressing consent; and the form is the mutual acceptance expressed by words or signs." We will speak of the form below, as we mentioned above. And it is proven that the remote matter is the bodies of the contracting parties, and the proximate matter is the mutual delivery of bodies, in the following way: This sacrament, according to the common opinion, has the nature of a contract. Just as, in other contracts, things are the remote matter, the expressed consent is the form, and the delivery of the thing is the proximate matter of the contract, namely, the application of the form to the remote matter; so, in marriage, the bodies (or the right in the bodies) are the remote matter, the consent expressed by words is the form, and the very delivery of this right in the bodies is the proximate matter, which is effected by the application of the form to the remote matter, namely, to the right that is transferred. But the marriage contract, elevated to the nature of a sacrament, has this special characteristic: that, in order to transfer the dominion of the right in the bodies of the contracting parties, a real delivery of the thing is not required, as is required in other contracts, but the mere external expression of the will is sufficient, as taught by St. Ambrose in *De Institutione Virginitatis*, c. 6, where he says: "It is not the loss of virginity that makes a marriage, but the conjugal affection." And St. John Chrysostom, *Hom. 32 in Matthæum*: "Marriage does not make the coitus, but the will." Therefore, the following resolutions:

"1. It can be validly and licitly contracted with a pact of continence, without the intention of procreation, and for the remedy of concupiscence. The reason is that it does not conflict with the essence of marriage. And this is evident from the example of the Blessed Virgin and St. Joseph.

2. It does not seem licit to contract solely for the sake of carnal pleasure, or vanity, because the end must be at least honest. Nav. c. 22, n. 79. Sanch. l. 2, d. 29, q. 3.

3. It can be licitly contracted for the remedy of concupiscence, intending nothing else, provided that procreation is not positively prevented: for this is under a different moral consideration."

[*Latin ed. p. 71*]

It is not permitted. Council of Trent, Session XXII, Decree on Marriage, Canon 25, Chapter 2, Number 46. Pontifical Law, Book 4, Chapter 24. Hurtado, Perez, De Matrimonio, Book 4, Chapter 48, Section 7, Number 6, citing 1 Corinthians 7. Hence, spouses can abstain from the use of marriage, and may desire to have fewer children than they can support, provided, as I said, that they do not positively prevent conception, nor do they procure an abortion. Perez, Epitome, Book 4, Chapter 48, Section 7, Number 6. Navar, Commentary on Canon Law, Chapter 46, etc. It is also licit to enter into

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marriage for honorable, external reasons, which are not contrary to the intrinsic purpose of the sacrament (which is the mutual union of souls and the sanctification of the couple), such as, for example, to promote peace between nations or to unite illustrious families, or to preserve the honor of a family. Thus, contrary to what Sanchin and Sylvestri teach, Hurtado, Diana, Part 3, Volume 4, Rule 219. See Perez, Dist. 48, Section 6, Number 7, where, along with Diana, he also permits it for reasons of wealth and nobility. It is valid, but illicit, to enter into marriage with the intention of denying the marital debt, avoiding children, or even fornicating, unless such an intention is included in the agreement, that is, unless it is added as a condition that obliges to something contrary to the essence of marriage. Therefore, the marriage is invalid if someone intends for the marriage bond to last only for a year, or if he reserves the right to commit adultery, or to not fulfill the marital debt when it is properly demanded. See Perez, Section 6, etc. Civil Code, 882. Three purposes can be considered in marriage: intrinsic and essential purposes, intrinsic and accidental purposes, and accidental and external purposes. The two intrinsic and essential purposes are: the mutual giving with the obligation to fulfill the marital debt, and the indissoluble bond. The two intrinsic and accidental purposes are: procreation of offspring, and the remedy for concupiscence. There can be many accidental and external purposes, such as: to promote peace, to obtain pleasure, etc. Given these points, it is certain that: 1. If someone enters into marriage, positively excluding the substantial intrinsic purposes of marriage, namely, with the intention of not fulfilling the marital debt, or of entering into marriage temporarily, he would not only sin, but would not enter into a valid marriage; this is the common opinion with St. Thomas in 4th part, Book 34, Question 4, Article 3. It is certain that: 2. If someone excluded the two intrinsic and accidental purposes, he could sometimes validly enter into marriage, as if he were an elderly person, and married without the hope of procreating offspring, nor intending the remedy for concupiscence; it is sufficient that the substantial purposes are preserved, as mentioned above; and thus, the Blessed Virgin Mary entered into a valid and licit marriage with St. Joseph, who certainly did not intend procreation of offspring, nor the remedy for concupiscence, and yet they entered into a valid and licit marriage, as in Matthew, Chapter 4: "Do not fear to take Mary as your wife." It is doubtful: 3. Whether someone sins venially if he marries primarily for the remedy of concupiscence? The first opinion affirms this, and St. Thomas holds this view in Supplement, Question 49, Section 5, Argument 2, which is followed by Navar, Chapter 22, Number 9, and Natalis, Alewi, Article 3, Regulation.

[*Latin ed. p. 72*]

3. Council of Trent, Session 22, Decree on Marriage, paragraph 393, number 5. Bossius, chapter 10, number 263, with Sylvestri Henrici, Ledo, and

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Sanchez, book 4, title 29, number 26. They prove this from the authority of many Saints. Furthermore, they prove it by reason, because, although the remedy for concupiscence is also an honest end of marriage, the primary end is the procreation of offspring; therefore, it is contrary to the order of reason to choose the secondary end over the primary one. The second opinion, which is no less common and no less probable, asserts that there is no sin, provided that the act does not exclude the end of procreating offspring; thus, Palatti, page 40, number 3; Roncaglia, page 144, question 2, response 2; Croix, book 6, page 3, number 236; Holzapfel, number 180; Bossuet, volume 2, chapter 7, number 43; Salmeron, on Matrimony, chapter 3, page 3, number 28, with Concilii et Decreta Pontificia, book 4, chapter 21, number 4, with P. Soto, Gabriel Almain, Covarrubias, etc.; also Cafet, Major, Durand, Richer, Palafox, Medina, Philiarch, Angles, Perez, Ugolin, etc., apud Sanchez, book 9, title 9, number 3. And what they say about betrothed couples, they also assert about married couples who have intercourse primarily to satisfy concupiscence. The reason for this opinion is that marriage is instituted by God not only to procreate offspring, but also as a remedy for concupiscence, as is proven from 1 Corinthians 7:2: "But for fear of fornication, let every man have his own wife: and let every woman have her own husband." However, St. Thomas responds to this passage in his Summa, saying: "If someone intends to avoid fornication in his spouse through the act of marriage, there is no sin, because this is a certain fulfillment of duty...; but if he intends to avoid fornication in himself, there is some infirmity there; and according to this, it is a venial sin; and marriage is not instituted for this purpose except according to mercy, which is for venial sins." But the interpretation of St. John Chrysostom seems more appropriate (whose opinions I have always followed in other matters), whose words I will soon quote, and whom Estius, Salmeron, and Cornelius follow, namely that "for fear of fornication" should not be understood as avoiding the fornication of one's spouse, but one's own; and this seems to be evident from the context of the same Apostle in the aforementioned chapter 7, where it is said: "It is good for a man not to touch a woman." But for fear of fornication, let every man have his own wife: and let every woman have her own husband. How can the Apostle give advice to men to abstain from touching women; but if they themselves are in danger of incontinence, so that they may not fall into fornication, is the remedy not only permitted, but recommended, saying, "Let every man have his own wife." And although he adds: "But I say this by way of indulgence, not by way of command," nevertheless, he says this for those who are not incontinent, to whom he only permits marriage, but advises them to abstain from marriage, as he says: "But I say to the unmarried and to the widows: It is good for them if they so continue, even as I." And here, indulgence does not mean permission of a venial sin,

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rather, as Pontius says with Estius, Salmeron, and

[*Latin ed. p. 73*]

To grant indulgence to someone is not to give permission to sin lightly, but to permit what is lawful. When St. Paul directs his words to those who are in danger of incontinence, he not only permits, but even urges them to marry, saying (verse 9): "But if they cannot contain, let them marry; for it is better to marry than to burn." He clearly indicates that marriage is a remedy, rather than a mere permission. This is further confirmed by what the Apostle says in the same passage (1 Corinthians 7, 5): "Do not deprive one another, except by mutual consent, for a time, that you may devote yourselves to prayer; and then come together again, lest Satan tempt you through your lack of self-control." Therefore, if it is permissible for spouses to abstain from marital relations in order to avoid incontinence, then it is also permissible to enter into marriage for the same purpose. Thus, St. John Chrysostom, explaining the words of the Apostle, says that one of the reasons why God instituted marriage is to avoid incontinence; in his own words: "What, then, was the cause of marriage? And why was it given by God? Hear Paul saying: Each man has his own wife, that he may avoid fornication." "To avoid fornication, to moderate lust, content with his own wife, this is what marriage offers; this is its fruit, this is its benefit; it is to be sought in marriage so that it may help us to live a chaste life." Thus says St. John Chrysostom, Homily 9, volume 6, column 19. The author responds to the authorities of the Saints who oppose this view in Petrocorens, volume 4, page 442, lines. But since the Fathers condemn marriage because they assume that those who marry will follow the impulse of lust, the reason for the contrary opinion, namely that it is improper to choose a secondary end before a primary one, is answered as follows: It would indeed be improper if the primary end were ordered to the secondary end, but not if a secondary end is chosen from among two lawful ends. However, such ends as the procreation of offspring or the avoidance of incontinence, in order to be considered honorable, must be referred to God, either actually, or at least virtually, and habitually, as commonly taught by Sanchez, book 8, chapter 9, number 3; Pontius, book 10, chapter 8, number 2; and Bossuet, volume 2, chapter 7, number 17, with Regius, Villanova, and Fillon, 883.

Doubt 2: Is it permissible to enter into marriage primarily for accidental, extrinsic ends, namely, for the sake of pleasure, for the sake of maintaining peace in the family, and the like? The first opinion affirms this, and this view is held by Pontius, book 4, chapter 21, number 13; Palearius, page 10, number 3; and Salmeron, on marriage, chapter 3, page 3, number 30, with Cajetan, Consentius, and Gabrel; and Sporer considers it probable, number 298, with Tambyle, provided that the proper, intrinsic end is not excluded, as mentioned above. The reason is that, since the proper end is always retained, it is not unlawful to order marriage to indifferent ends; for then

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the end (e.g., pleasure) is not the primary one, but merely the impelling reason for entering into marriage, by which the pleasure is already made honorable.

[*Latin ed. p. 74*]

The second opinion denies this, and it is held by D. Th. in 4. d. 31. q. 2. art. 3; Sporer n. 297; Tamb. tr. 4. c. 2. §. 3. n. 14; Ronc. p. 144. q. 2. r. 2. *in fine*, and Sanch. l. 6. d. 14. n. 4, citing St. Augustine and St. Anselm. The reason is that it cannot be free from any disorder to intend to order a sacred thing for a profane purpose, and to contract marriage for reasons other than those for which the marriage is licit. I believe a distinction must be made: if the end is, in itself, honest, namely, the peace of the people, love among relatives, the preservation of family honor, the protection of health, and the like, then I believe it can be said, with Busemb. as above n. 4; Pont. l. o. Con. d. 25. dub. l. n. 14; and Pal. d. n. 3 (who hold this as certain, contrary to Sanch.), that marriage can be lawfully contracted, because this is not a disorder, as we said above; to choose someone from secondary honest ends rather than a primary end, provided that this is not excluded. Otherwise, if the end is not honest, namely, if it is for pleasure, or for the greed of riches, or for vain honor, as held by Busemb. n. 2, with Nav.; and Sanch.; and Vasq. q. 3. art. 2. n. 4, with common opinion 884.

"6. Those who are contracting marriage must be in the state of grace, even when they contract through a procurator: because they receive the true sacrament, even if they are asleep. This is different for the procurator through whom they contract, as well as for the priest who celebrates the marriage; because neither receives nor administers the sacrament, but only assists as a witness. Card. de Lug. de sacr. dub. 8. s. 9. n. 155." (Thus, Salm. de matr. c. 3. p. 4. n. 10. and p. 3. dub. 4. n. 89. and 92. with Sanch. and common opinion. He would sin if he were in mortal sin at that time, just as if he were contracting the marriage himself. Ronc. p. 143. q. 6. and Bon. p. 5. num. 42. with Reb. Con. Gutt. etc. And he would indeed sin with a double sin of sacrilege: first, because he would receive the sacrament unworthily; secondly, because he would minister unworthily, as we will say in n. 897 and following. But this latter is probably not mortal, according to what is said about the Sacraments in general, n. 32, since the spouses are not ministers consecrated for such a sacrament.) 885.

"Note here that, in order for a procurator to contract marriage on behalf of another, several things are required: namely, I. A special mandate; for which, however, a written document is not required, but it is sufficient if it is given orally, as say Sanch. l. 2. d. 14. num. 5. and 14; Salm. de matr. c. 3. p. 4. n. 97 *in fine*; and Pal. part. 9. n. 2. with Gutt. and Perez. Nor is a difference of sex required, so that two men, or two women, can well perform this office, as Sanch. n. 48. and Pal. ibid. with Guttier. II. That the mandate be to contract with a specific person; see Salm. l. c. III. That

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the procurator himself contract, because he cannot delegate another, unless he has an express and special license from the mandator. And these three things are expressly stated in c. final. de procurat. in 6. IV. That the mandate has not been revoked (nor even mentally) by the mandator, before..."

[*Latin ed. p. 75*]

Marriage should be celebrated. Sanchez, n. 6; Palafox, n. 2; and Salm, ibid., n. 98, with Pontius and Bonaventure. And this holds true, even if the revocation is made tacitly, that is, if someone gives a mandate to marry one person, and then celebrates the marriage with another. Sanchez, n. 40; and Palafox, d. n. 2, with Covarrubias, Concilii, and Guttmann. The procurator must show the mandate to the parish priest and witnesses, and before them, the marriage must be contracted, according to the form of Trent. However, it is not required that the procurator deliver the mandate to the same individuals on behalf of the person giving the mandate. Sanchez, n. 23; and Salm, ibid., n. 102, with Pontius, Bonaventure, etc. VI. The procurator must not exceed the limits of the mandate. However, it should be noted that if a condition is required by the person giving the mandate, namely, that the marriage be contracted with a certain dowry, at a certain time, etc., if the condition is not met, the marriage will be null. Sanchez, n. 47; Roncaglia, p. 143, q. 6; and Concilii, d. 24, dub. 9, n. 67. If, on the other hand, a condition is required by law, namely, that the marriage be contracted after the required announcements have been made, with the Bishop's permission, etc., then the marriage will be valid even without those things, as is commonly said by Bonaventure, p. 5, n. 8; Sanchez, n. 18; Navarret, c. 27, n. 78; and Salm, ibid., n. 104, with Palafox, Trull, Regius, and Diana. Because marriage is valid in itself, even if illicit, therefore, it is also valid when celebrated by a procurator; for this form is added to properly perform the act, but not as a condition without which the mandate is invalid. 886. — It is questioned here, whether, if someone gives a mandate without the intention of marrying, but before the celebration of the marriage, ratifies the mandate, then the marriage is validly contracted? Palafox, p. 9, n. 2; and Concilii, d. 27, dub. 7, n. 72, deny this, because that mandate, lacking the intention of marrying, was null, and therefore it could not be revalidated solely by consent, but it is necessary that consent be expressly given again. But Sanchez, l. 2, d. 41, n. 13; Bonaventure, part. 5, n. 6; Roncaglia, p. 143, q. 6; and Salm, de matr., c. 3, p. 4, n. 104, with Trull, argue that the procurator validly contracts the marriage to the extent that he expresses, in his own words, the will not of the past, but of the present, of the person giving the mandate; therefore, it is sufficient that, at the time he contracts the marriage, the will of the person giving the mandate is present, so that the act is valid. This seems more probable, but I do not consider the first opinion to be improbable. In such marriages, the parish priest should ask the procurator: "Do you, in the name of Luciam, wish to take her as your wife?" And to the woman:

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"Do you, through your present procurator, wish to take Franciscus as your husband?" See Salm, ibid., n. 407. Marriage can be contracted by letter, when one, for example, the groom, writes to the bride, declaring that he takes her as his wife, and from that time, accepts her as his wife; and the bride writes the same to the groom, and both afterwards read the letters before the parish priest and witnesses. But when the man writes to the woman, declaring that he takes her as his wife, and accepts her consent from the time that she has given it, then, even if the woman does not reply, it is sufficient for the marriage to be contracted, if the woman opens the letters before the parish priest and witnesses, and gives her consent; thus, Sanchez, l. 2, d. 42, n. 2.

[*Latin ed. p. 76*]

Psalm, ibid., no. 408, and Villalonga, *De Matrimonio*, p. 9, no. 41, and Mollerus, *Concordia Henrici et Guttadii*, 7. The spouse has power over the other's body, but not to exercise lust contrary to generation. 887. — 8. Consent must be present, expressed verbally, in writing, or by signs. However, it is sufficient for one party to express consent through another, as when parents contract marriage for their children, with the children remaining silent. See Villalonga, p. 3, vol. 4, no. 272. (What is said about the betrothal of children, which, even if they remain silent, are contracted by their parents, applies also to their marriage initiated in this way. See Salm, *De Matrimonio*, ch. 6, p. 4, no. 61, with D. Thomas, Sanchez, Bonaventure, etc.) ▪ It is also sufficient if 2. one party adds their consent to the prior consent of the other, and that consent is not revoked. Therefore, if someone does not truly consent before a priest, it is sufficient for them to consent afterward. See Villalonga, loc. cit., no. 292. ▪ (However, a man who falsely contracts marriage is obligated to take the woman, as taught by Lugo, *De Jure*, d. 42, no. 48, and Croix, l. 6, part. 3, no. 258, with Sanchez, lib. 1, dub. 41, even if there is a disparity, which, as Lugo says, rarely excuses [the marriage].) Exceptions are made only in 1. If there is fraud on the part of the woman, as declared by the Holy See. See P. Zacharias, in Croix, loc. cit. And 2. If no harm will result to the girl, as say Sanchez, loc. cit., no. 5, and Croix, in the aforementioned no. 258, with Palæo and Krimer. It is certain among all (except for a few mentioned by Bossius, ch. 3, no. 44), that for a valid marriage to be contracted, words are not necessary, as taught by D. Thomas, in 4th part, d. 27, qu. 1, art. 2, qu. 2, ad 2 and 3, Bellarmine, *De Matrimonio*, ch. 8, Sanchez, lib. 2, d. 31, no. 5, Roncaglia, p. 444, qu. 1, and Bossius, no. 44, with Panormius, Navarrius, Covarrubias, and others, throughout. This is proven from ch. 23, *De Sponsalibus*, where it is stated that the deaf and dumb can validly marry; and from ch. 1, §. Fin. *De Desponsibus Impuberes*, in 6, where it is said that for the marriage of a daughter, the consent of the parents is sufficient, if she remains silent; also from ch. Those who give testimony about betrothals, where it is stated

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that formerly, betrothals, through intercourse, passed into marriage. From these canons, it is inferred that words are not necessary, since, there, it is sufficient for a valid contract, consent expressed only by signs, and even presumed. This is more clearly proven from ch. To your fraternity 25, *De Sponsis*, where, to the question: Whether marriage is contracted solely by words? Innocent III answered: Marriage is truly contracted by the legitimate consent of a man and a woman, but, as far as the Church is concerned, words are necessary that express consent in the present tense; for the deaf and dumb can contract marriage by consent without words. 888. — But are words necessary by divine law? Some affirm, as Aversa, Cornejo, and Rodriguez, in Salm, *De Matrimonio*, ch. 6, p. 3, no. 52. And they prove this from the words mentioned above (in the cited ch. To your fraternity): "As far as the Church is concerned, words are necessary, etc." And

[*Latin ed. p. 77*]

Therefore, the betrothed feel that they are sinning gravely when they express their consent only through signs, when they could do so with words. Others, however, deny that words are required by law: thus, Pontius, book 2, chapter 7, paragraph 14; Palatinus, page 7, paragraph 7; Vivaeus, question 4, article 2, paragraph 4; and Diana, page 3, treatise 4, response 248. For they argue that nowhere is it stated that such a law exists. They respond to the aforementioned text, stating that Pontius did not intend to exclude other signs that express consent, and that he said that words are necessary in relation to the Church, not in relation to the substance of the act, but in relation to a more certain proof of the marriage. And so also the Glossa states in the same place: "It is not contracted without words, or through some other means by which it is understood that they consent." Therefore, Pontius, in the Tridentinum Council, session 24, chapter 4, requires nothing other than that the priest, after questioning the man and the woman, and understanding their mutual consent, should say: "I join you..." Others, however, more plausibly say that words are required, but only under venial sin, as Sanchez states, book 2, part 34, paragraph 10; Rencius, page 444, question 4, response 2; and Bossuet, chapter 3, paragraph 48, with the opinions of Fulgentius and Henry. For otherwise, the custom of the Church would be violated. But such a sin can be excused by shyness, or some other reasonable cause.

It is certain that the giving of a ring, or the taking of the bride into the groom's house, are not sufficient signs to contract marriage, unless these have, by custom of the place, come to signify consent; thus, commonly, Sanchez, book 4, part 22, paragraph 4; Pontius, book 2, chapter 4, paragraph 3; Salmeron, ibid., page 4, paragraph 60; and others, in general. However, a sign is sufficient if the woman extends her hand when the man expresses his consent, as commonly stated by the aforementioned authors. But is it sufficient if the woman does not withdraw her hand from the man who

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is extending his? Pontius, paragraph 8, and Vivaeus, question 4, article 2, number 4, agree. But Sanchez, book cited, paragraph 6, etc., chapter 4, on double marriages, contradicts this, stating: "Indeed, consent is faith when, although she does not take his hand, she consents in her heart and with her mouth. Therefore, it is not sufficient that the other does not withdraw her hand, when faith is given, but it is also required that he express his consent with his mouth, as the Glossa also states in the word 'takes'."

"Question: Can a conditional consent suffice? Answer: 1. It suffices conditionally, under a condition of the past or present, provided that the contract is not suspended. (And this also applies if the condition were shameful, such as: 'I will take you if you have committed fornication; if you hate my enemy.' In this case, the marriage is null if the condition is not fulfilled, because there is no consent at all.) 2. It suffices under a condition of the future, provided that the contracting parties do not intend to suspend the consent for that time, for example: 'I will take you if you become a widow.' Also, under a condition of the future that is impossible, for example: 'if you touch the sky,' or under a condition of the future that is shameful, provided that the substance of the marriage is not repugnant, and the consent is absolute, for example: if..."

[*Latin ed. p. 78*]

"You shall not kill your father." The reason is that such conditions are considered as not having been added. Sanch. l. 5. dub. 45. Moll. Fill. Less. l. 2. c. 48. dub. 45. Laym. Bonae. Resp. 3. It is not sufficient to include a condition that is future and contrary to the essence of the matrimonial obligation, for example, if one intends to prevent the generation of offspring through witchcraft, or to obtain sustenance through adultery. This is evident from the final canon on conditions. See Sanch. l. 5. d. 10. Con. d. 29. dub. 3. Fill. etc. 894. — Therefore, if a condition of the future is necessary, namely, if your father dies; if you are the only heir, etc., it does not suspend the marriage, as is commonly stated by St. Thomas in 4. d. 29. qu. 2. ar. 3. q. 3. Ronc. p. 145. q. 4. r. 4. Holzm. n. 341. and Salm. de matr. c. 7. p. 2. n. 9. and 10. with others. It is said of itself, for if the contracting party, saying this, intends to wait for the time of that condition, then the marriage is suspended until that event occurs. Ronc. and Holzm. l. c. and Salm. de matr. c. 7. p. 2. n. 42. and Conc. p. 207. n. 30. However, if the condition is scandalous, then a distinction must be made: If it is contrary to the essence of marriage, namely, contrary to the good of the sacrament, faith, or offspring, then it does not produce a marriage. Otherwise, if the condition is scandalous in another way (or if it is impossible); for these, although they would not produce a contract in other contracts, at least until the fulfillment of the condition, as they say Holzm. num. 344. and Viva q. 4. ar. 6. n. 5. from Institut. §. 11. de Inu. stipul., are nevertheless considered as not having been added in marriage; this is expressly stated in the final canon on

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appended conditions, etc., where: "If conditions contrary to the essence of marriage are included, for example, if one says to the other: 'I contract with you, if you avoid having children,' or 'until I find someone more worthy in honor or fortune,' or 'if you will commit adultery for my sake,' then the matrimonial contract, however favorable it may be, lacks effect." Although other conditions appended in marriage, if they are scandalous or impossible, should be considered as not having been added, because of the favor shown to marriage. The reason is that, when a condition is scandalous or impossible, the Church presumes that there is an absolute consent of the contracting parties. Therefore, as they rightly point out Pont. l. 3. c. 4. n. 9. Boss. v. 10. n. 423. Salm. ibid. p. 4. n. 2. and Viva q. 4. art. 6. n. 5., if the parties did not truly intend to contract unless these conditions were fulfilled, then the marriage would indeed be invalid. However, in cases of doubt, it should be presumed that the conditions were added in jest, and not with the intention of suspending consent, as Sanchez says in lib. 5. d. 3. n. 45. Pont. d. n. 9. Ronc. p. 145. q. 5. r. 2. Holzm. and Viva l. c. from the final canon on Sent. etc., where in cases of doubt, one should always judge in favor of the validity of the marriage. 892. — Question: What should be said here, when a marriage is celebrated under the condition that my father consents? Answer: If the condition is of the present or past, and the consent of the father is present, then the marriage is valid, even if the contracting parties are unaware of it. However, when the condition

[*Latin ed. p. 79*]

It is certain that in such cases, the marriage is entirely suspended until the condition is fulfilled; this is agreed upon by all. See Sanchez, book 5, chapter 7, paragraph 3, and Pontifical, book 3, chapter 43, number 23.

However, one might ask: What is to be said if the father remains silent? The answer is that the circumstances must be considered; for if the conjecture is such that the father is silent because he disagrees, for example, if the father remains silent lest he displease the lord or a friend, then his silence should be considered as dissent. However, if the conjecture is that he is silent because it pleases him, then his silence should be considered as consent, as Sanchez states in the aforementioned passage, paragraph 44, and in the Council, page 210, paragraph 34.

In cases of doubt regarding the father's consent or dissent, one must consider the intention of the contracting parties, whether they were content or not, or whether the father did not explicitly contradict, as Bonaventure states, question 2, page 10, paragraph 20.

But what if there is doubt about the intention of the contracting parties? Angelus and the Dicastery, in Salm's work on marriage, chapter 7, page 5, paragraph 58, state that in such cases, the positive consent of the father is required. And Salm rightly believes this to be probable, because the condition must be fulfilled in a specific form, according to the law "Qui hæredi,"

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section 1, and the law "Mævius," on conditions and demonstrations.

However, it is more commonly, and even probably, held by Roncaglia, page 147, question 7, response 1, and Bonaventure, in the aforementioned passage, that, with common consent, as Spor argues in number 326, Sanchez, book 5, chapter 7, paragraph 12, with Adrian, Navar, Lopez, etc., and Salm, in the same place, paragraph 59, with Henry Sylvester, Cornejo, Leand, etc., such silence should be considered as consent, because, according to common sense, such a condition is understood to be fulfilled if the father consents, or at least does not explicitly dissent. This will be even more the case if the father dies before dissenting, as Viva rightly states in the aforementioned passage, against Pontifical, book 4, chapter 47, paragraph 15.

Furthermore, Roncaglia rightly points out in his "Regulations in Practice," number 2, that parish priests should never admit conditional marriages without a very urgent reason, due to the many inconveniences and difficulties that may arise, which could affect the validity of the marriage.

Question 2: What if the father, having initially dissented, later consents? Should it then be considered that the condition has been fulfilled? Sanchez, book 5, chapter 7, paragraph 10, Pontifical, book 4, chapter 47, paragraph 15, Roncaglia, page 146, question 7, response 1, and Salm, in the same place, paragraph 57, with Soto, Con, Per, Dic, etc., deny this, arguing that, once the father has dissented, the condition for the marriage is lacking, and therefore the contracting parties can withdraw from the marriage, even if the father later consents, because an obligation, once extinguished, does not revive.

However, Sylvester Lopez, Tapia, in Sanchez, number 3, argue the opposite, stating that, in such cases, the contracting parties still persevere in the same intention and are obligated to marry. This reasoning, in itself, does not seem convincing to me; but the second opinion seems very probable if the father consents after a short interval, as Palaus states, page 44, section 2, number 7, Navar, chapter 22, paragraph 64, and Viva, in the aforementioned passage, with Hurt and Con. For, in common understanding, the words of such a condition are to be understood in a moral sense, that is, if the father acquiesces within a reasonable time, according to the judgment of prudent individuals. As is the case conversely.

[*Latin ed. p. 80*]

Marriage is more likely to be declared invalid if the father, after giving his consent, soon retracts it, as stated by Viva, loc. cit., and by the Council, p. 210, n. 34. Croix, loc. 6, p. 3, n. 86, rightly adheres to this opinion, stating that the betrothal is dissolved when the father firmly retracts his consent, to the point that there is no hope that he will consent within a short time.

894. — Doubt 3. What if, at the time the condition regarding the father's

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consent was stipulated, the father had already died? The answer is: If the parties were already aware of the father's death, then that condition is considered not to have been added, as if it were impossible; this is the common opinion of Pal, p. 41, §. 2, n. 9; Salm, de matr., c. 7, p. 5, n. 59; and Henr. Bonac., p. 40, n. 20, along with Con. Gutt., Fill., and Sanch., loc. 5, d. 7, n. 49; and Nav., Sylv., Lop., Led., and Præp. A greater doubt arises if, at that time, they were unaware whether the father was alive. Nav., c. 22, n. 64, and Sylv., Præp., and others apud Sanch., deny that the marriage is valid, because the condition, which was considered possible, cannot be further verified. However, Sanch., n. 49, and Pal., loc. cit., along with Con. and Salm., dict. n. 59, and Henr., argue that it is more likely that the marriage is valid; because that condition is understood to have been added so that the marriage would not be performed against the father's will; which reason ceases to exist when the father is deceased. Whether a marriage or betrothal between parties with a valid impediment is valid, entered into under the condition: "If the Pope grants a dispensation?" See what is said on this matter in l. 4, n. 650, and in this book, l. 6, n. 859.

Response 4. Consent given under a condition of a future honest act is a contract of betrothal only, and not of marriage, because the latter must be of the present. For this reason, the marriage will not begin to be valid without a new consent, after the condition has been fulfilled, as taught by St. Thomas and others apud Sanch. Although Fill., Laym., and others believe the contrary to be probable, because a contract celebrated under a condition of a future honest act, when that condition is fulfilled, is purified. This is conceded by Bon., q. 2, p. 40, n. 20, if the parties remain in the same consent, at least virtually.

895. — Question: After the condition in the marriage has been fulfilled, is a new consent required? The first opinion affirms this, and is held by Swar., de rel., l. 7, c. 42, n. 48; Conc., p. 208, n. 28; Pont., l. 3, c. 14, n. 5; along with Soto, Val., Cov., and Led., and Trull., Villal., Con., etc., apud Salm., de matr., c. 7, p. 5, dub. 4, n. 64 to 66, who call it probable. And this seems to be favored by D. Th., Suppl., q. 47, a. 5, where it is stated: "Either (the condition) is contingent, such as the giving of money, or the acceptance by the parents, and then the same judgment is made of such a consent, as of a consent that is given in the future, and therefore it does not make a marriage." Reason 4 is: because, since marriage is not only a contract, but also a sacrament, it cannot depend on a future condition, for all sacraments must be either valid or invalid immediately. Reason 2 is: because, in other contracts...

[*Latin ed. p. 81*]

It is possible to transfer ownership temporarily, but in marriage, ownership of the bodies must be transferred permanently; and therefore, it is necessary that, once the condition is fulfilled, a new consent be given.

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The second opinion, however, denies this, and this is held by Laym. c. 7. n. 2, Bon. p. 10. n. 20, Pal. p. 11. §. 2. num. 5, Nav. c. 22. n. 63, Ronc. p. 147. q. 7. r. 2, Sanch. l. 5. d. 8. num. 5, with Palud., P. Soto, and Henr., and Salmant. ibid. n. 67, with Con. Perez, Dicastill., Avers., Gabr., Reb., and Corn. Ratio, because marriage, even if it is also a sacrament, has the nature of a contract; and all contracts, once the condition is fulfilled, are perfected without a new consent, according to the law in Hæc venditio, 7. ff. de contrahenda emption. And thus, the fourth reason is answered. It is answered to the second reason that ownership is not transferred while the condition is pending, but only when it is verified; for then, when the previous consent virtually persists, the marriage becomes absolute, even if it was conditional. Indeed, this opinion does not contradict St. Thomas, because the Doctor, in the aforementioned passage, speaks only independently of the fulfillment of the condition, and therefore rightly says that, while the condition is pending, it cannot be said to be a true marriage, but rather it is equivalent to betrothal, so that it is not permissible to enter into marriage with another. Both opinions are probable, but the second opinion seems more probable. Furthermore, Viva rightly says in q. 4. art. 6. n. 4, and Croiæ in l. 6. p. 3. n. 762, that it is more prudent to contract marriage again in that case. What if there is an impediment to marriage between two betrothed individuals, and they themselves promise under a condition, if the impediment ceases? Sanch. de matr. l. 5. d. 8. n. 10, and Croiæ l. 6. p. 3. n. 85, with Ang. Cov. and Krim., agree that a new consent is not required if the impediment existed. However, Victoria, in his commentary on Croiæ, believes that a new consent is required; and this seems more probable to me, because the consent given during the time of the impediment does not seem sufficiently valid; and thus, P. Zacharia reports in Croiæ l. c., that in a similar case, the Holy See declared. 896.—It should be noted here that a condition is different from a demonstration, a cause, a manner, or a day; because a demonstration or cause added (for example, if someone says: "I take you, because you are a virgin," or "because you are a virgin") does not vitiate, nor does it suspend the marriage (even if the cause is false, or scandalous, even against the substance of marriage, as Sanch. l. 5. d. 49. n. 2). For, although he would not marry if he knew that she was not a virgin, he nevertheless gives absolute consent at that time, which is not impeded, unless it is due to an error about the substance, or about the substantial conditions of marriage; but see n. 4042. Neither does a manner suspend it, if it is said, for example: "I take you, so that you may serve me." Thus, Salm. de matr. c. 7. p. 1. n. 5, and Viva q. 4. art. 6. n. 2. Even if the manner is about a scandalous or impossible thing: "I take you, so that you may kill," etc. The reason is that the consent does not depend on the manner, as it does depend on the condition. And even if (says Viva with Pal.) the manner is against the substance of marriage, namely: "I take you, so that you may

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commit adultery," etc. But Salm. contradicts this.

[*Latin ed. p. 82*]

Matrimony, Canon 7, paragraph 4, number 6. Sanchez argues that a person does not possess the capacity to enter into a contract if they have an intention contrary to the contract. Whether a specified day suspends the contract, for example, if it is said, "I will give you the dowry after three days?" Sanchez denies this, as stated in his work, number 14. However, the opinion that it does suspend the contract is supported by Viva, with Concini, Hurtado, Perez, and Salm, as stated in his work, number 3, because the contracting party does not intend to give perfect consent until after the third day.

DISSERTATION: On the minister and the form of the sacrament of matrimony.

Some say that the minister of matrimony is the priest who assists, and the form is the very words: "I join you in matrimony," etc. This is the opinion of Canus in *De Locis theologicis*, book 8, chapter 8; Juenin in *Institutiones theologicae* on matrimony, question 2, chapter 2; Concini, volume 10, page 194, number 5; and Tournel in *Praelectiones theologicae* on matrimony, question 3, article 2. This opinion is considered probable by Estius in *Decreta*, book 4, title 26, section 40, and by Habert in *De matrimonio*, chapter 4, citing Tolet for this opinion in *De matrimonio*, book 7, chapter 2, but not accurately; for Tolet explicitly states there that the form of the sacrament of matrimony is the consent of the contracting parties; therefore, if the consent of the spouses is the form, they themselves must necessarily be the ministers; for, as Bellarmine rightly states in *De matrimonio*, chapter 7, and Frassen in question 3, article 3, "he who applies the form to the matter in a sacrament is undoubtedly the minister of that sacrament." The arguments in favor of this first opinion are presented below in the objections, to which we will respond.

The second opinion, which is the common opinion and seems morally certain, states that the contracting parties themselves are the ministers of this sacrament, and the form is the words by which they express their consent; thus, Bellarmine, who calls our opinion the common one in the schools (as even Canus admits), and the opposite opinion, new and false, as Gonet states in *Manuale de matrimonio*, chapter 7; Frassen in *Sodales titii*, question 3, article 4; Cabas in *De matrimonio*, book 8, chapter 48, number 4; and Laym in chapter 2, number 2; Abelly, pages 200, question 1, and 2; Wigandt, page 16, number 10; Holzmuller, pages 322 and 320; Barbos in *Allegationes*, number 32, number 169; Suaraz in *De sacramentis*, question 64, division 10, section 4; Bonin in *De matrimonio*, page 4, number 5, with Concini, Rebellin, Guttieri, Fillon, Rega, Rodriguez, etc.; Pontius in *De matrimonio*, book 1, chapter 8, number 3, with Vasquez and Leander; and the *Summa Pontificii Benediciti XIV. de Synodo*, book

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8, chapter 42, with Gotti, Raynaud, etc.; and de Larea, Cardinal Bellarmine in *Controversiae*, volume 3, on the sacraments of matrimony, chapters 7 and 8, where he calls Canus' opinion false, and our opinion the common one; Fagnan in volume 4, in the chapter "Quod nobiles de clandestinis desponsationibus," number 54, where he says that the contrary opinion is dangerous to the faith; Sanchez in *De matrimonio*, book 2, title 6, with Lopez, Vega, Henry, and Manuel, who call the opposite opinion reckless; Merbes in *De matrimonio*, question 6, who states that all theologians assert that Canus' opinion was never probable; and Vasquez and Leander assert that it cannot be defended without a warning; and Sotus calls the opposite opinion reckless.

[*Latin ed. p. 83*]

Our opinion is also expressly held by D. Th. in 4. d. 26. q. 2. art. 1. ad 1. and dist. 26. q. 4. art. 3. (whose words we will quote in response to the 4th Objection), and by Scotus in 4. d. 26. q. 4. n. 14. Prob. 4. Because the Council of Trent, in session 24, o. 4, declared that all clandestine marriages, that is, those celebrated without the assistance of a priest, are true and valid, and that anyone who denies this is to be condemned with an anathema. However, the marriages of the faithful cannot be said to be valid unless they are sacraments, as will be demonstrated shortly. Therefore, if clandestine marriages were once valid, and therefore sacraments, it must be said that the priest is not the minister, but rather the contracting parties themselves. That these marriages are valid because they are sacraments is proven by D. Augustine in his book "On the Good of Marriage," chapter 24, where he states: "The good of marriage is for the procreation of children among all peoples; but what pertains to the people of God, even the sanctity of the sacrament, also applies." Also, in chapter 8: "But in our marriages, the sanctity of the sacrament is more important than the fruitfulness of the womb. And from this arises (as he says in chapter 7) an indissoluble bond: for without the reason of the sacrament, the marriages of the faithful would not have such strength." I do not believe that this strength could have existed without some kind of sacrament being employed. Moreover, this reason for indissolubility exists with our spouse only in the City of God, that is, because of the sacrament. And it is more clearly proven from chapter "Quanto, on divorce," where Innocent III says: "Although the marriage of infidels may be true, it is not nevertheless valid. But among the faithful, it is true and valid, because it is a sacrament of faith, which, once received, is never lost, but remains a sacrament of the valid marriage (note), so that it endures in the spouses as long as they live." Therefore, if before the Council the marriage of the faithful without a priest was a sacrament, it must necessarily be said that then the contracting parties were ministers of that sacrament. Do not say that the sacrament of marriage is not to be understood as the sacrament of matrimony, but as the bond of marriage,

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as it symbolically signifies the union of Christ with the Church, so that marriages become valid through baptism alone (which is the sacrament of faith), when infidels are converted to the faith, even though they do not receive the sacraments. For it is objected that it is not true that the marriages of infidels become valid through baptism alone, that is, in every way indissoluble; although the marriages of infidels are naturally indissoluble, yet, with the addition of some urgent cause, they can sometimes be dissolved even after conversion to the faith (provided they have not been consummated after conversion), as Cardenas states in the arguments of Innocent XI, diss. 2, no. 550, where Urban VIII declared on October 20, in the year 4626, and again on September 7, 4627, with these words: "We hold that the marriages of such infidels are not to be considered as such, because they can be dissolved if necessity requires it." And St. Pius Benedict XIV, in "De Synodo," book 13, chapter 21, no. 3, states that St. Pius V and Gregory XIII dissolved certain marriages contracted in infidelity after conversion to the faith. Therefore, if clandestine marriages of the faithful before the Council, that is, without the assistance of a priest, were a sacrament, it must necessarily be said that then the contracting parties were ministers of that sacrament.

[*Latin ed. p. 84*]

The opinion of the parish priest, once declared, is considered valid, because the sacraments, therefore, are not administered by the parish priest, but by the contracting parties themselves. Proof 2, from Florence, states: "The seventh sacrament is marriage, which is a sign of the union of Christ and the Church, according to the Apostle." The efficient cause of marriage, regularly, is the mutual consent expressed through words in the present tense. If, therefore, the contracting parties, through expressly expressed consent, are the efficient cause of marriage, then they are, therefore, ministers, not only of the contract (as some wrongly explain), but also of the sacrament; for the Council uses the term "sacrament" when explaining, not the contract, but the sacrament, saying: "The seventh sacrament is marriage." Proof 3, from the same Council, session 24, chapter 4, states in the clause that invalidates marriage: "Those who attempt to contract marriage otherwise than in the presence of the present parish priest..." are rendered incapable, and such a contract is declared null and void. It does not say, "Those who contract marriage otherwise than in the presence of the present parish priest, and with the utterance of words," but only, "Those who contract marriage otherwise than in the presence of the present parish priest." If, therefore, marriage is not invalidated by the silence of the parish priest, but only by his absence, then the words of the parish priest are not of the essence of marriage, and consequently, he is not its minister. But you might infer from this that, in the absence of a parish priest, marriage is null and void, even with regard to the contract, but not that, in the presence of a

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parish priest, and with his silence, the contract is valid, not only with regard to the contract, but also with regard to the sacrament. But it is answered that the reason of the sacrament is not distinguished from the reason of the contract, since theologians commonly say that the marriage contract was instituted by Christ for the purpose of the sacrament. And it is to be considered that the Fathers of the Council held our opinion, because theologians (whose judgment should be considered to have been followed by the Fathers of the Council) before the Council asserted that the contracting parties themselves are ministers of the sacrament of marriage, as testified by Bellarmine, book 7, and Pontedera, chapter 7. And Canus himself admits that this opinion was common in the Schools; and Dom. Sotus, in the 4th book, 26th question, 2nd article, 3rd section, wrote that no one had dared to write anything to the contrary at that time. And although Canus cites William of Paris for himself, Bellarmine and Petroc. explain that blessing of the marriage, which William requires, to be a condition, but not the form that constitutes the sacrament of marriage. Furthermore, Bellarmine says that other Fathers, whom Canus cites, do not speak of the blessing that the priest gives when he is present, and he says: "I join you together, etc.," but of the blessing that the priest gives in the Mass, about which the same Bellarmine says that the Pontiffs, following Canus, also spoke. And that (as is evident) cannot be the form of the sacrament, since there are no words there that appear to be the form of the sacrament. Proof 4, from the same Council, is based on the fact that, when the marriage is being celebrated, the Council instructs the parish priest to say: "I join you together in marriage, etc.," and then adds, or instructs others to use other words, according to the established rite.

[*Latin ed. p. 85*]

Concerning the custom of each province. But if a council had rejected the parish priest as the minister of marriage, how could it prescribe any particular words, which are according to the custom of each province? This argument seemed evident to Cardinal Pallavicino (Hist. del Concil. l. 23. c. 14.) to prove that it is not the priest, but the ministers of the spouses who are the ministers of the marriages. It is proven by Benedict XIV in his laudable work on Synods, l. 8. c. 13. n. 8, who reasons as follows: In places where the decrees of Trent have been promulgated, it sometimes happens that some people contract marriage with witnesses present by chance, and with the parish priest objecting to uttering any words. Such a marriage would, in the opinion of Cano, be valid in the matter of contract, but not a sacrament, due to the lack of the priestly blessing. If the Church held the opinion of Cano to be true (indeed, I add, even if it held it to be merely probable), the Church would be obliged to compel, or at least urge, the contracting parties to renew their contract before the same parish priest, so that through his words the sacrament might be conferred, lest they be perpetually deprived

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of grace, which, according to the more common opinion, they would obtain through the repetition of the contract. Then he adds that, for the same reason, the Church ought to take care to restore clandestine marriages begun in places where the decrees of Trent are not accepted. But since we do not see the Church urging the renewal in either case, it must be inferred that both contracts, although lacking the priest's blessing, are considered by the Church to be sacraments. The opponents may reply that the Church does not care about restoring the aforementioned marriages because, once a marriage has been validly begun, it cannot subsequently become a sacrament, as held by Vasquez, Durand, Pont. and others. But Benedict replies in the aforementioned passage that it is far more common to find the opinion of other Doctors, whom Sanch. de matr. l. 2. disp. 9. follows, who teach that a marriage, previously valid only in the matter of contract, can indeed be renewed and acquire the force of a sacrament. Thus, the difficulty proposed is not resolved; for in this doubt, the Church would not neglect to urge the faithful to renew their marriages in those cases, lest they be deprived of the hope of obtaining grace, which, according to the more common opinion, they would obtain through the repetition of the contract. Nevertheless, the aforementioned Benedict says that the opinion of Cano, shared by so many Doctors, is likely, and that everyone is free to embrace it, without any mark of error. Furthermore, consider the practice of the Church in revalidating marriages that were previously begun before a priest and witnesses, but were invalid due to a hidden impediment, in which the Sacred Penitentiary, dispensing according to the oracle of St. Pius V, requires very little, and indeed expressly says that they must be revalidated secretly, without the assistance of the priest and witnesses; and thus teach, contrary to a few, Nat. Alex. Tourn. Habert, and the same Benedict XIV, with Van-Espen, Pontas, and numerous declarations of the Sacred Congregation and decisions of the Roman Rota, and countless other authors; see the aforementioned number 1410. With these things established, I am greatly surprised that the aforementioned Benedict, after...

[*Latin ed. p. 86*]

He contends with reasons of such urgency against the opinion of Cani, that he calls the fourth [point] probable, although he seems to consider it probable only externally, and not intrinsically, because (as he says) it is supported by the consensus of Doctors. However, it is more fitting to pay attention to what Benedict writes in the Decree, or Letter, to the Archbishop of Goanum, which begins, "A few weeks ago," where he writes as a Pope, rather than what he presents as a private doctor in the aforementioned work on the Synod; for in that Decree, he expressly teaches that the ministers of the sacrament of matrimony are the contracting parties themselves, and not the priest, although he says that the matter consists of the mutual delivery of bodies, expressing consent with words and gestures, and the

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mutual acceptance of bodies, which is the form (1). 898.

I. They object that only priests are the legitimate ministers of the sacraments, based on the words of the Apostle (1 Corinthians 4). Thus, we are considered by some to be ministers of Christ and dispensers of the mysteries of God. And therefore, they say that the established form is that which is found in the Ritual, which the parish priest must pronounce over the betrothed, saying: "I join you in marriage." Therefore, they add that some Saints Fathers (whom Bellarmine cites, chapter 8) have said that marriages are sanctified by priests. But it is answered, with St. Thomas, *Summa Theologica*, distinction 26, question 2, who teaches thus: "The words by which the marital consent is expressed are the form of this sacrament, and not the blessing of the priest, which is a kind of sacramental." A sacramental is a certain solemn ceremony which is required by the law of the Church. And this is what the Saints Fathers intend. This is clearer from the same Council of Trent, cited above, chapter 6, session 14, where it is not said that the priest must absolutely pronounce the aforementioned formula: "I join you, etc.," but that he may say it, or use other words, according to the custom of each province. But that formula does not bear any other meaning than if the priest were to say (as Frassen and Sanch. say): "I approve and bless your marriage in the sight of the Church." But it is not true that all sacraments must be administered only by priests, since deacons are also sometimes legitimate ministers of the sacrament of baptism; for Christ established the ministers of the sacraments according to the nature of each sacrament; and because the nature of contracts is that they begin with the consent of the contracting parties, therefore, in marriage, which consists of a contract elevated to a sacrament, Christ established no other ministers than the contracting parties themselves, who, by their consent, would minister the form of the sacrament.

II. The Council of Cologne, in the year 1536, page 7, chapter 4, states: "That the sacrament (namely, of marriage) if anyone..." (1) The following statements, which the Author made in *Homo Apostolicus*, treatise 18, number 28, have less weight: "I do not dare to call the opinion that the parish priest is the minister of marriage improbable, especially since Benedict XIV. calls it probable in his work on the Synod."

[*Latin ed. p. 87*]

Having received [the consent], and with the priestly prayer added, the gift of the Spirit is conferred, whereby the man loves his wife, just as Christ loved the Church. From this, they infer that if the gift of the Spirit is conferred through the priest's blessing, then the sacrament is perfected through it. But Frassen and Bellarmine rightly respond that from the words of this council, the opposite is rather deduced; for those words do not signify that the sacrament is perfected through the priestly prayer, but rather that, after the sacrament has already been perfected, that prayer

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is added, through which the gift of the Holy Spirit is conferred, and the priest's prayers are heard. This is all the more so because the *Enchiridion*, published under the name of the same council, expressly stated: "The words of the spouses, by which they give each other their faith, are the word (that is, the form) by which the sacrament is made." Canus objects, citing the testimony of Pope Evarist in *Aliter*, question 5, cause 30, where it is said that marriages contracted without the blessing of a priest are rather to be presumed adulteries or fornications than legitimate marriages. But Bellarmine rightly responds in the aforementioned place, chapter 8, that the Pope is speaking here about the proof of marriage with regard to external law, since the Church does not judge those marriages in external law to be legitimate unless they are proven by the testimony of a priest, presuming then that mutual consent was lacking; unless (as is added in the same text) the will of the parties themselves suffices. Therefore, when the will of the contracting parties is present, a legitimate marriage is entered into, although something else may be presumed in external law. But that Evarist was certainly speaking about external law, Bellarmine wisely says that Canus himself cannot deny; for Trent expressly declared that clandestine marriages are true marriages, while Evarist does not say that they are not sacraments, but calls them adulteries and fornications; therefore, so that it may not be said that Trent contradicted the testimony of Evarist, what Evarist says must necessarily be understood in the context of external law. Canus objects another point, which is easier to answer, as you will see in Bellarmine, cited, chapter 8, page 899. — From our own opinion, it follows that 4. marriages which are celebrated through a procurator, because they are legitimate contracts, are therefore also true sacraments, and it is not necessary for the contracting parties to afterwards appear before the parish priest to ratify the marriage. Sanchez, book 2, title 44, number 27, and Bellarmine, chapter 7, number 8, along with Navarr, Soto, and others, against Canus. It follows that 2. marriages maliciously contracted before a reluctant parish priest, and who denies the blessing, are indeed gravely illicit, but valid and true sacraments, as all those cited in our opinion say; and this even if the parish priest intends not to understand, that is, by closing his eyes and ears, as Pontius says, book 5, chapter 29, number 22, and Salmant, on marriage, chapter 8, page 5, number 67, along with Led and Leand (against Bonac and Trull, and Sanchez, book 3, title 39, number 6), from the decree of the Sacred Congregation, quoted by Farinac, where the question is asked: "And what if the parish priest was present, but nevertheless..."

[*Latin ed. p. 88*]

He observed or heard what was being done, to determine whether such a marriage was null. The Sacred Congregation responded: "The marriage is not valid." It follows that, if the priest did not understand, unless the

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priest himself claimed not to understand, it would not be understood. Furthermore, it is inferred that marriages celebrated before a priest and witnesses, with a hidden impediment that nullifies the marriage, become true sacraments through the consent given, once the impediment is removed by dispensation, even if the priest is absent; see the aforementioned section, number 4410. And this argument, as Benedict XIV stated in the aforementioned passage, strongly supports the idea that the minister of marriage is not the priest, but rather the spouses themselves; otherwise, it would be rightly said that the Church would never allow the spouses to remain in danger, and thus without the grace of the sacrament. However, there is a decree of the Holy See, dated June 8, 1619, found in Ferraris' Bibliotheca, volume 5, under the heading "Matrimonium," number 49, which states that if a marriage is null due to a public cause, namely, due to a lack of age, it must be revalidated before the priest and witnesses. It follows that the priest, if present at a marriage that is validly contracted but involves a mortal sin, does not commit a grave sin, because he does not confer nor administer the sacrament; thus, Sanchez, book 2, chapter 6, number 1, and Bona, page 4, number 5, with Suarez, Concilii Henrici, and Regius. But is it required by a grave precept that the priest say the words, "I join you," etc., or other words according to the accepted custom of each province, as is stated in the Council of Trent, session 24, decree 4? Bona, page 8, number 4, denies this, citing Sanchez, Concilii Henrici, and others, who believe that the omission of these words is only a venial sin due to the smallness of the matter; but Barbos, in "De Potest. Episcop.," allegation 32, number 180, along with Rob. Henricus and Salzedo, and this opinion is more pleasing to me. The question arises: can the spouses, who are entering into marriage, be validly separated, distinguishing between the contractual aspect and the sacramental aspect? Suarez, in book 3, page of marriage, chapter 7, section 1, Pontius, book 7, title 9, number 3, and others deny this, saying that a man cannot separate what God has joined. But Vasquez, Cajetan, Durand, Victoria, and others, as cited by Sporer, in "De Matr.," chapter 4, number 359, affirm that the contract can validly remain without the sacrament. But it should be noted that all agree that this action would not be without grave guilt. Therefore, it is inferred that the Church would never allow a marriage to be revalidated without the assistance of a priest (as the Church generally admits), tolerating that the marriage persist as a contract, and not as a sacrament, unless it were certain that the spouses are the true ministers of the sacrament.

[*Latin ed. p. 89*]

DOUBT II. CONCERNING THE USE OF MARRIAGE. ARTICLE I. Whether the use of marriage, or the conjugal act, is licit? 900 The conjugal act is illicit. I. If the marriage is null. II. If the marriage is doubtful. 901 Q. I. Is it permissible to contract marriage when there is doubt about an

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impediment? 902 Q. II. Is it permissible when there is a probable opinion of the impediment's non-existence? Q. III. Is it permissible when there is a probable opinion, a probability of fact? 903 Q. IV. Is it permissible to petition for and grant [annulment] when there is doubt about the validity of a marriage already contracted? And, specifically, is a wife not certain of the death of her first husband obligated to grant [remarriage] to a second? 904 Doubt 1. If a marriage is contracted in good faith, and doubt arises, is it permissible to petition [for annulment] after due diligence? 905 Doubt 2. What if there is only a probable opinion regarding the nullity of the marriage? 906 Doubt 3. If a marriage is begun with doubtful faith, can the one who doubts petition [for annulment] after due diligence? 907 Doubt 4. In a positive doubt, should judgment be rendered in favor of the marriage contracted? 908 Is a spouse obligated to believe the other spouse who asserts that they falsely consented? What if they hear of an impediment from witnesses of dubious faith? What if they hear it from a single, trustworthy witness? 909 III. The union is illicit if it is done with the danger of impurity. Doubt 1. Is it permissible to unite [in marriage] if one of the spouses suffers from leprosy, a venereal disease, or a similar ailment? 910 Is it permissible to unite [in marriage] after bathing at Bagnols, or after a vasectomy, or when suffering from a fever? Or, immediately after dinner? 911 Doubt 2. During the time of lactation? 912 IV. If the union is done for the sake of pleasure. 913 V. If the union is done with an adulterous mind. What if a spouse is delighted by the beauty of another person in order to arouse themselves? 914 What if they are delighted by the union of others? 915 VI. If the union is done in an improper manner. 916 Q. I. Is it a mortal sin to begin the union in a preposterous manner? 917 Q. 2. Is it a sin to unite in an unnatural position? 918 Q. 3. Is it a sin to prevent conception after the union has begun? Is it permissible, however, for a wife, if her husband withdraws after the emission of semen, for her to immediately arouse herself to conceive? 919 920 VII. If the union is done in an improper place. (Reference to book 4, number 458.) 921 VIII. If the union is done at an improper time. 923 Q. I. Is it permissible for a spouse to unite [in marriage] on the day of Communion? (Reference to numbers 273 and 274 in this book VI.) 923 Q. II. On holy days? 924 Q. III. During the time of pregnancy? But, if the danger of abortion is removed, is the union venial? 925 Q. IV. Is it permissible to unite [in marriage] during menstruation? 926 Q. V. During the time of purification after childbirth? 927 The use of marriage is licit, 1. For the sake of children. II. To avoid incontinence. III. For other honest purposes. 928 Q. I. Is a man ever obligated to unite [in marriage]? 929 Q. II. Is a woman ever obligated to unite [in marriage]? Volume V.

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830 Q. III. Can a spouse who is forbidden to have relations, or who has

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contracted an impediment by reason of consanguinity, ever legitimately request them?

831 Q. IV. Is it permissible to request relations from an excommunicated person, and is it permissible for an excommunicated person to offer them?

832 When, and under what circumstances, are physical contact, glances, and indecent words permissible between spouses?

833 Q. I. Are indecent physical contact and glances among themselves, in themselves, mortally sinful, given the danger of pollution?

834 Q. II. What if the danger of pollution is already foreseen?

835 Certain acts of physical contact are, by their nature, indecent.

836 Q. III. Does a spouse sin gravely by indecently touching oneself in the presence of the other spouse?

837 Q. IV. Does a spouse sin if he or she is delighted by the thought of having or intending to have relations?

900. — ANSWER: In themselves, such acts are licit and honest. This is a matter of faith and is evident from 1 Corinthians 7:3: "Let the wife have power over her own body, as well as the husband over his." However, they can become illicit in the following circumstances: I. If the marriage itself is null in its essence: although, if both parties are unaware of this, neither party sins, unless materially. If either party, or both, are certainly aware of this, neither can, under any circumstances, exercise the marital right. Therefore, if it is not possible without endangering one's life or reputation to reveal the impediment, nor to obtain a dispensation, one must either enter religion (if the marriage has not yet been consummated), or flee, or seek a divorce (due to the spouse's cruelty, for example, or adultery, if such is the case), or patiently endure all the inconveniences. Bon. q. 8. p. 8. n. 10. II. If the marriage is doubtful. Indeed, if only one party doubts, that party cannot demand the marital act; however, he or she is obligated to fulfill it, since the other party has the right to demand it. If both parties have entered into marriage with doubtful faith, or doubt the validity of the marriage, neither party may demand or offer the marital act until the truth has been investigated. Vasq. Sanch. Dian. Barb. d. 6. tr. 44. p. 7. §. 3. Conversely, after such investigation. Bonac. qu. 4. p. 4. I regret having to speak at length about this matter, which carries with it such a stench that it disturbs even the most chaste minds simply by its name; but I wish that this matter were not so frequent in confessions, so that it would not always require a full discussion by the confessor, but that it would suffice to be instructed in a concise manner! Forgive me, therefore, chaste reader, if I speak freely about it here, and if I delve into particular cases that exhibit the ugliness of such acts. If anyone should find it strange that prudent and pious authors have treated this matter more extensively, even describing the minute circumstances of various cases, let him hear the most distinguished Louis Bail, who defends this work of the most learned Thomas Sanch from

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this censure, with these words: "Although some acts involve matters that are foul, hell itself is more foul; and if a word is a bond, it is more foul to rot in sin, as the Blesensis says." That author mentions certain obscenities, but only for the purpose of treating the sick. If men were angels, they would not need such things.

904. — Question I. Is it permissible to enter into marriage when there is doubt about a diriment impediment? Before diligence is applied to ascertain the truth...

[*Latin ed. p. 91*]

It is certain that it is not permissible to contract marriage with absolute certainty; however, after due diligence has been exercised, it is commonly taught by Doctors of the Church that marriage can be contracted with a probable opinion, based on a probable legal judgment regarding the absence of an impediment, provided that this opinion is universally or certainly accepted by authorities as probable; thus, Sanch. de matr. l. 4. d. 6. n. 48, Pal. tr. 28. d. 3. p. 4. §. 9. n. 4, Card. in prop. 4. Innoc. XI. diss. 2. n. 525. et 528, Viva in eamd. prop. n. 29. in fine, Suar. 3. p. t. 3. q. 67. ar. 8. dub. ult., Croiax l. 6. p. 4. n. 447. et p. 3. n. 527. ac 538, and Boss. t. 1. Mor. tit. 4. §. 54. n. 4928, and Mazz. t. 4. p. 220, and Holzm. t. 2. p. 369. n. 491, with the common opinion: and this opinion is called safe and morally certain by Card. l. c., Holzm. n. 492, Viva d. n. 29, and Croiax d. n. 447, among others. It is not objectionable to say that, with a probable opinion, it is not permissible to administer the sacrament of marriage to the spouses. For it is answered that, in that case, the sacrament is not administered with a mere probable opinion, but with moral certainty; for when there is a probable opinion of the law that there is no impediment, then the Church, by ancient custom, is presumed to approve the marriage and to remove any impediment, as the aforementioned authorities commonly say, along with others, and Cardenas l. c. n. 542, and several decisions of the Roman Rota, and certain declarations of Urban VIII, abundantly demonstrate. However, it must be noted that if there is doubt concerning the death of the former spouse, then it is not permissible to contract marriage (whatever Boss. t. 2. c. 2. n. 41, and Vidal ap. Wigandt tr. 46. Casu post. n. 52, may say), because if the former marriage still exists, one cannot enter into a second marriage with prejudice to the former, unless it is established (at least morally) that the former spouse is dead, as is expressed in c. Dominus, de secund. nupt. It must also be noted, with Pal. p. 4. §. 9. n. 4, that if an impediment is established, and there is no established dispensation, then marriage cannot be contracted, nor can the proper remedy be sought after; for then the impediment is equally present. Conversely, if a dispensation is established, and there is doubt about its validity, because then possession is considered equivalent to the value of the dispensation. However, this applies only if the impediment is of ecclesiastical law. 902. — Question II. Whether, if

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there is a probable impediment of natural law, it is permissible to contract marriage with an equally probable opinion regarding the non-existence of the impediment? I answer: In itself, it is not permissible, because it is illicit to administer the sacrament of marriage with only a probable opinion regarding its validity, as is clear from prop. 4, condemned by Innocent XI, when there is also a probability of an impediment, even of natural law; namely, if there is doubt about the dissolution of a prior marriage; then the Church cannot dispense, as it can and is presumed to dispense, when there is a positive doubt (as we have said) about an impediment of only ecclesiastical law. I said "in itself"; for in cases of grave necessity—

[*Latin ed. p. 92*]

The sole reason by which marriage can be contracted is if it is accompanied by a declaration from the Supreme Pontiff, as the sole interpreter of divine law. And so, Cardenas states in proposition 1 of disputation 2, number 553, that Urban VIII had previously declared that, when presented with a doubt by John of Lugo, who was later a Cardinal, concerning whether the marriages of certain non-Christians in the kingdom of Paraguay were valid, and whether, after baptism, they were obligated to take their first wife from among those they had previously had, or whether they could choose the one they preferred, the Pontiff, after consultation, stated that when the opinions of the doctors were equally probable, the opinions more favorable to the condition of the places and the barbarian people should be followed. See d. n. 897, v. Prob. 1, Question III. Is it permissible to contract marriage with a probable opinion, not only of law, that is, based on the authority of the doctors, but also of fact, namely, when there is a probable fact on both sides, for the existence and for the absence of an impediment? Tamborini, in Decrees, book 4, chapter 3, section 3, number 27, and Bonaventure, and others, apud Croix, book 6, page 4, number 448, affirm this. But Cardenas rightly denies this in proposition 1 of Innocent XI, disputation 2, numbers 524 and 629; Viva in the same proposition, number 29; and Croix, book 6, page 4, number 448, with Gormaz and Aversa. The reason is that, although the Church is presumed to supply or dispense in the case of an impediment when there is a probability arising from the law, as we mentioned above, this does not apply when there is only a probability arising from fact, which does not constitute full proof, as Cardenas explains in number 629. Assuming this, it is not permissible to use a primary opinion when contracting marriage; for although the first opinion may be probable, it is presumed that the Church can dispense even with only the probability of fact regarding the absence of an impediment; however, when this opinion is not commonly or certainly accepted as probable (as it should be in order for the Church to presume that it can dispense, as Cardenas rightly states in number 624, and Croix, book 6, page 4, number 447, with Aversa and Gormaz), and when the validity of the sacrament is at stake,

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we cannot safely follow that opinion. Sanchin, book 8, title 6, number 48; Cardenas, number 527; Viva, in the aforementioned proposition, number 34; and Tamborini, in Decrees, book 4, chapter 3, volume, marriage, number 4, with Merolla, all state this, and Croix, book 6, page 3, number 533, with Sporer, Gobius, Krim, and others, consider it probable, that in a question of fact, if conjectures are present on both sides, these do not constitute anything more than a negative doubt, and therefore, if the doubt about the impediment cannot be resolved, marriage can be lawfully contracted, because in that case, one must presume in favor of liberty. But this opinion is contradicted by Palafox, book 4, title 3, page 8, number 40; Lessius, in Auctorum, volume on Marriage, case 40; Continens, Tournhem, book on dispensations, part 4, chapter 47, article 3; Roncaglia, page 452, question 5, in the footnote; Renzi, volume 4, page 45, question 4, with Vidal and Layman, book 4, title 4, chapter 5, number 23, with Hurtado and Veracini, and they rightly disapprove of the reasoning presented by their opponents; for although, in other contracts, even with a negative doubt about the honesty of the contract, it is permissible to proceed.

[*Latin ed. p. 93*]

To enter into a marriage, if there is doubt, it cannot be done, because then one must stand for the freedom; however, marriage, because it has not only the reason of a contract, but also of a sacrament, cannot be entered into with doubtful matter; just as in other sacraments, it is not permissible to use doubtful matter except in a case of necessity, lest the sacrament be exposed to the danger of frustration, according to proposition 1, condemned by Innocent XI. Therefore, the first opinion could only be said to be probable, if the opinion of those whom we have cited in book 4, number 54, were probable, that the aforementioned proposition was not prescribed because of the danger of the frustration of the sacrament, but because of charity towards the recipient, lest he be deprived of the fruit of the sacrament, if, perhaps, the opinion about its value is not true. And in this case, Croia, in book 3, number 533, along with others, states that the doubtful party should be made aware of such a doubt, lest he be exposed to the danger of serious inconveniences. But if, truly (as Sanch. and Card. state in number 528), in such a doubt, there is a presumption urging for an impediment, and there is no presumption for the lack of it, for example, if a man has intercourse, and afterwards doubts whether he has conceived, or whether it is inside or outside the body, then the presumption arising from commonly occurring things is for an impediment, and marriage must be prevented. Otherwise, if there is a presumption to the contrary, as if a man has sown near a vessel; then, (as Sanch. says in book 3, number 48), marriage can certainly be entered into. Furthermore, it is probably said by Emmanuel Sa, in "Dispensation," number 1, Merbes, volume 4, page 406, number 8, verse 4, and Contin. Tourn. in the cited place, that it is to be considered,

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along with Pichler, and that Diana, in page 4, treatise 3, line 47, considers it probable (contrary to Sanch. in book 3, number 28, although in "Decretum," book 4, chapter 40, number 26, he seems to have retracted) that the Bishop can well grant a dispensation in doubtful impediments. And the same is said very commonly by the Doctors, speaking generically of all cases, or impediments reserved to the Pope, when there is doubt as to whether they require a dispensation, as Pal, in page 4, treatise 3, book 6, page 5, number 40, Cabas, volume 4, book 4, chapter 8, number 5, Barb. alleg. 35, number 19, Ronc. page 54, question 6, Holzm, volume 4, page 99, number 491, Elbel, volume 4, page 147, number 442, and Salm. de leg. chapter 5, page 4, paragraph 4, number 45, and Bonac. considers it probable in the same title, book 4, question 2, page 2, number 48. The reason is that, on the one hand, although the dispensation of such impediments is reserved to the Pope, nevertheless, since the reservation is odious, it must be strictly interpreted and restricted only to certain cases, as we have said in a similar number 600. On the other hand, it is quite probable that the Bishop can grant a dispensation in such a doubt, both from chapter "Nuper," 29, concerning excommunication, where it says: "Because the Founder did not specifically retain the absolution for himself, it seems that he conceded the faculty to others to relax it." And there, the Glossa adds: "And this is the argument, that Bishops can dispense where a special dispensation is not prohibited, and it is conceded what is not prohibited." (See the words in book 4, number 491, and below in book 6, number 980, see dub.). And this is also approved by Sporer, in book 4, chapter 4, number 22, Elbel de matr. number 474, and Roncagl. de 5. præc. chapter 2.

[*Latin ed. p. 94*]

Q. 61. Since, in cases that frequently occur, a subject may obtain a dispensation from a superior regarding the law (as we stated in common law, book 4, number 490), it follows that a Bishop may grant dispensations in cases of doubtful impediments, because it frequently happens that one doubts the necessity of a dispensation.

903. — Question. V. Is it permissible for those already married to request or grant a dispensation in a case of doubt concerning the validity of the marriage? It is certain that, during the doubt, whether the doubt preceded the marriage or arose subsequently, the spouse who doubts cannot, before making due inquiry to resolve the doubt, repeat the marriage, but he can, and is obligated, to grant a dispensation to the other spouse in good faith; this is evident from the words of the Lord in the chapter on second marriages, where it is said: "Some of you say, 'It is not lawful for a man to put away his wife.' But every man is not to understand this." We answer you that no one should presume to enter into a second marriage until he knows that his spouse has died. But if anyone does not observe this, and still believes that he should doubt the death of his spouse, he should

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not deny what is due to the one who has married him, provided that he knows that it is not to be demanded of him. And the reason for this is clear, because in a doubt, no one should be deprived of a certain right that he possesses in good faith, as the Doctors commonly teach (e.g., Sanch., book 2, chapter 42, number 442; Salm., on marriage, chapter 15, page 4, number 48, near the end; Council, page 383, number 5, and others). Also, Pontius states (book 10, chapter 45, number 8), but he gives a different reason, saying that the one who doubts is obligated to grant a dispensation to the one who requests it, because of the principle that of two evils, the lesser should be chosen (c. Duo mala, dist. 43). But the lesser evil is to grant a dispensation rather than not to grant it, because in not granting it, there is a danger of injustice; whereas, in granting it, there is only the danger of fornication, which is a lesser evil than injustice. But this reason does not hold; for if the possession of the second husband does not prejudice the right of the one who requests the dispensation, the greater evil of injustice would not be avoided, as Pontius supposes, because the woman would still be exposing herself to the danger of injustice, namely, of doing wrong to the first husband, if he should still be alive. Therefore, it is necessary to return to the first reason, namely, to the certain right of possession that the second husband has, and that this right should be preferred to the uncertain right of the first husband, since he doubts his death. Therefore, whenever a woman is not certain of the life of the first husband, she is obligated to grant a dispensation to the second husband who requests it; and this is true even if there is a probable opinion in favor of the invalidity of the second marriage, and no opinion in favor of its validity, because the second husband cannot be deprived of his certain right, unless there is certainty of the death of the first husband, as rightly taught by (e.g., S. Anton., 3, page, title 4, chapter 3, section 3; Croix, book 6, part 3, number 300, with Card. Merolla and Bressero, and Sanch., book 2, chapter 44, number 3, with Soto, Navar, Palud, Sylv, Ang, Led, Corrad, Henr, Man., etc.). This is clearly demonstrated from the chapter on the Inquisition, concerning sentences of excommunication, where it is said: "When answering your inquiries, we believe it is necessary to distinguish whether one of the spouses knows for certain an impediment to the marriage, or whether he does not know for certain, but believes it." In the first case, he should rather..."

[*Latin ed. p. 95*]

To humbly maintain the judgment that carnal intercourse constitutes a mortal sin. Secondly, we distinguish whether one has a light and rash awareness of this, or a probable and prudent one. Indeed, if one has a light and rash awareness (the explosion of light and rash credulity), one may licitly not only render, but even demand conjugal duties. However, when one's conscience presses with a probable and prudent awareness, although not evident and manifest, one may render the duty, but should

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not demand it, lest one offend either against the law of marriage, or against the judgment of conscience. Let this be known with certainty: therefore, if one is not certain, one is bound to render. This is confirmed from c. If a virgin, causes 34, q. 2, where it is written: If a virgin marries a man, and is about to be with another man, if she always remains ignorant, she will never be an adulteress; but if she knows (nota), she begins to be an adulteress. Where the learned Sanch. notes in the same place, with Sylvest., that "sciat" is taken for certainty. The same is taught by D. Th. in 4, d. 44, q. unic., art. 5, q. 4, ad 3, where it is written: Either one has certain knowledge of an impediment to marriage, or an opinion; if in the former case, one should neither demand nor render; if in the latter, one should render, but not demand. Also, S. Bonav. says in 4, d. 38, at the end: If one is certain of the life of the former husband, one should neither ask nor render. But doubt 1: Whether, in a marriage contracted in good faith, if doubt arises, and with due diligence it cannot be dispelled, it is permissible for the one who doubts, not only to render, but also to demand. The first opinion denies this, and Navar. c. 42, no. 54, Conc. p. 382, no. 3, as well as P. Soto, Medina, Sylv., and Corrad. ap. Sanch. l. 2, d. 42, no. 45, hold this view. And it seems that D. Th. also holds this view in 4, d. 38, in the exposition of the letter, where it is written: If a doubt arises about the life of the former husband, if there is some cause that could even establish certainty, one should neither render nor demand; but if that cause has made the doubt probable, one should render, but not demand. The same is said by S. Bonav. in the aforementioned d. 38, at the end, saying: If one doubts probably, one should render the duty, but not demand. This is supported by the aforementioned passage from c. Inquisitioni, where it is written: But when conscience presses with a probable and prudent awareness, although not evident and manifest, one may render the duty, but should not demand it. The second opinion, which is much more common and probable, affirms this, and is held by Sotus de just. l. 4, d. 5, art. ult., at the end, Lugo eod. tit. d. 47, no. 88, Pal. de spons. d. 3, p. 4, §. 9, no. 6, Laym. de conscien. c. 5, §. 3, no. 24, Wigandt tr. 46, no. 59, Coninck d. 34, dub. 40, no. 108, Holz. no. 466, Ronc. p. 185, qu. 6, r. 2, Fill. tract. 40, c. 9, no. 343, Habert t. 7, p. 827, qu. 4, Diana p. 3, tr. 4, r. 295, with Valent. and Vill. Salm. de matr. c. 45, p. 4, no. 46, with Reg. and Henriq. Bon. p. 4, no. 5, with Rodr.

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n. 302. With Suarez, Lessius, and Bossuet, as well as Sanchez, book 2, chapter 44, number 46, and Led. Lop. Bann. Veracr., it is held that, because he who has entered into marriage in good faith should not be deprived of his right, which he possesses to petition, until it is established that there is an impediment; for, indeed, even if a doubt arises, the right of possession is suspended until the truth is investigated, but the doubt remains after due diligence; and if the ignorance is then invincible, the possession remains

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valid for the sake of the marriage, and consequently for its use: for the possessor in good faith, just as he can retain the thing after due diligence, so too can he use it. This reason is well confirmed by c. Laudabilem, concerning chastity and malice, where, in a doubt about the validity of a marriage, due to a doubt about the ability of the spouses to consummate the marriage, they are granted a period of three years to make the due petition; therefore, they are granted permission to petition in such a doubt only to the extent that the spouses entered into the marriage in good faith, and therefore they possess the right to petition, until the impediment of impotence is made certain through a trial period of three years. However, with regard to the cited text in c. Inquisitioni, the authorities respond in various ways: Lugo, in *De Justitia*, book 47, number 88, says that the Pope speaks there of a case in which one spouse has only a probability of the invalidity of the marriage, and no probability of its validity. Others, however, more commonly and correctly, as Sotus, in the cited place, Sanchez, number 53, and Pal, number 6, with Coninck, say that the text should be understood as forbidding the petition before due diligence has been exercised; otherwise, after due diligence has been exercised; for then (as has already been said above), the spouse remains in possession of his right, practically having laid aside the doubt through that principle, which states that in doubt, the condition of the possessor is better. Indeed, the text, by saying that the spouse who believes [that the marriage is invalid] cannot petition, presupposes that he has not yet formed a practical judgment of conscience, having laid aside the doubt, when it adds that he cannot petition: lest he commit an offense, either against the law of marriage, or against the judgment of conscience. Hence, it becomes clear how necessary it is in moral theology to admit that it is permissible to lay aside doubts through reflected principles; for if these are denied, there appears to be no reason why it is permissible (as the Pope himself declares there) for a spouse who doubts the death of his former spouse to make a demand for the dowry. However, Sanchez, number 48, correctly points out that a spouse who doubts cannot make a demand for the dowry in the first trimester before the due diligence has been exercised, even if the petitioner is in good faith, because at that time the other spouse does not have the right to petition. And the same should be said if the petitioner is deprived of the right to petition due to incest or adultery.

905. — Doubt 2. Can a spouse, who has entered into marriage in good faith, and who has a probable reason for the invalidity of the marriage, but no reason for its validity, petition after due diligence has been exercised? The first opinion denies this, and this is held by Sanchez, book 2, chapter 44, numbers 2 and 4, Lugo, in *De Justitia*, book 47, number 88, Salm, in *De Matrimonio*, chapter 45, page 4, number 49, Sporer, in *De Conscientia*, number 77, Bon, question 4, page 5, number 43, Reg. and Gult., and Viva, question 7, article 3, number 44, who call it the common opinion. These say

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that a spouse is in such a situation –

[*Latin ed. p. 97*]

One party may be compelled to grant a divorce to the other who has validly contracted it, but the other party cannot demand it. The reason is that possession supports the one who doubts, but not the one who has only an opinion, in matters concerning the nullity of marriage. The second opinion, which is quite probable, affirms this, and this is held by Pal. de spons. d. 3. p. 4. §. 9. n. 6, along with Coninck and Croicx l. 6. p. 3. n. 302. These authors say that a spouse is not forbidden from seeking a divorce after due diligence, if the doubt is removed, and the conscience is formed according to the same rule mentioned above, namely, that no one should be deprived of his certain right which he possesses in good faith, unless it is certainly proven that he has no right, as they say in the words of Anaclet. de matr. d. 43. qu. 6. n. 85, with Henriq. and Cardenas, Merola, and Bresser, apud Croicx n. 300, and the author himself, Sanch. l. c. n. 3, admits this. In this matter, there seems to be a difference between one who acts in good faith and one who acts in bad faith; for the possessor in bad faith cannot seek a divorce, as they say (Sanch. l. 2. d. 42. n. 2; Spor. d. n. 77; and Salm. ibid. n. 48), unless he has certainty, or at least probability, for the validity of the marriage (although there are some Doctors of the Church who maintain that this is sufficient, if after due diligence the doubt is removed, as we will see in the following Objection); but the possessor in good faith can seek a divorce after due diligence has been performed, provided that the nullity of the marriage is not established, because possession gives him a certain right to seek a divorce, which outweighs any probability to the contrary: for probability, being opinionative, and therefore always including some doubt in the opinion, cannot take away the legitimate presumption of the validity of the marriage, arising from the very possession of a marriage validly contracted. See what we said in a similar case in l. 1. n. 36. This is confirmed by c. Laudabilem de frigid. et malef., where, in a doubt about impotence, it is granted to the spouses to try for up to three years; for I ask, if after two years the spouse has not yet been able to consummate the marriage, is it probable that the marriage is valid? Certainly, it is highly probable; and conversely, it is highly probable that it is null. And yet, despite this, the spouses can continue to try until the end of the three years; I ask, why? Not for any other reason, except because the marriage is not yet certainly null, and they have not yet been deprived of their possession. Furthermore, even the opponents themselves concede that a spouse who believes that the marriage is null must be compelled to grant a divorce, even if there is only a probability of the nullity of the marriage; and they cannot deny this, since it is expressly stated in c. Inquisitioni, cited above. The reason is that no one should be deprived of his legitimate possession until it is established that his right is null. Therefore, although there is only

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that one opinionative assent for the nullity, the spouse who doubts cannot deny the other party what is due to him, lest he deprive him of his certain possession; so, after due diligence, he himself is not compelled to deprive himself of his certain possession based on that opinionative conscience alone, unless he is certain that he has no right. It is said to be an opinionative conscience, which includes doubt, and does not reach certainty, for if...

[*Latin ed. p. 98*]

A spouse who has doubts must possess reasons so convincing regarding the nullity of the marriage that they establish a moral certainty of its nullity; otherwise, that spouse can neither petition for nullity nor grant a dispensation. Furthermore, Croix correctly states in number 304, and this is also the opinion of the Cardinal, that a spouse who still has a reasonable hope of finding greater certainty cannot petition, because as long as the doubt is capable of being dispelled, one cannot exercise the right to petition.

906. — Doubt 3. Can a spouse who, having entered into marriage with doubts about an impediment, perseveres in that doubt after due diligence, petition for the nullity of the marriage? The more common opinion is that this is not possible, and this view is held by Pal. d. 3. p. 4. n. 6; Ronc. p. 185. q. 6. r. 2; Salm. de matr. c. 15. p. 4. n. 48; Bon. p. 4. n. 10, with Coninck, Fill., etc.; and Sanch. l. 2. d. 42. n. 2, with Nav. Sylvest. etc. This is proven in two ways: 1) from the passage in Dominus, concerning second marriages, where it is stated that a party contracting in bad faith can scarcely petition. 2) By reason, because no one can use something that they began to possess in bad faith; therefore, if one cannot dispel the doubt, they can never petition.

The second opinion, which is sufficiently probable, affirms this, and is held by Holzm. p. 355. n. 466; Elbel p. 404. n. 146. The reasoning is as follows: Even if the doubting spouse cannot dispel the doubt based on the title of possession, they can nevertheless dispel it based on other principles, namely: first, that in cases of doubt, one must adhere to the value of actions, as stated in l. Quoties, ff. de reb. dub. Secondly, because, since marriage is a favorable cause, one must adhere to its value in cases of doubt, as demonstrated by Sanch. l. 4. d. 48. n. 6, with Cov. Lopez, and Menoch., because, just as in external matters, in cases of doubt, judgment must be rendered in favor of the validity of the marriage, according to the common opinion found in c. fin. de sent. et re judic., so too must judgment be rendered in internal matters, which must conform to external matters, when this does not involve a false presumption. The passage in d. cap. Dominus, which seems to contradict this, is not an objection, because it refers to a party who contracted marriage with doubts about the death of the former spouse, in which case it is certain that the doubting spouse cannot petition until the death of the former spouse is established; otherwise, the right belongs to the former marriage. However, this applies only to the spouse who contracted marriage with doubts; it does not apply to the spouse who

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contracted marriage in good faith, as we have stated in number 904.

Generally, Sanch. l. 4. d. 42. n. 8; Bon. p. 4. n. 10; Boss. t. 2. c. 2. n. 41; Spor. de consc. n. 77; Ronc. l. c.; and Salm. ibid. n. 51, with Dic. and Croix num. 299, with Schilder. Avers. etc., state that even if a marriage is contracted with doubts about an impediment, the doubting spouse can petition for nullity if the marriage is considered probably valid, even if it is more probable that it is null, as stated by Sanch. and Sporer. However, this must be admitted with great caution; for in the case of doubt about the death of the former spouse, whether the marriage was entered into in good faith or with doubts, the doubting spouse can never petition unless there is certainty about the death of the former spouse, or at least such a presumption that it establishes moral certainty. Otherwise, if only a probability of the death is present, the spouse cannot.

[*Latin ed. p. 99*]

Never should a spouse, while doubting, seek [divorce], because then the danger of injury to the former spouse remains, according to what is said in the Treatise on Conscience, which I myself composed; and because, in that case, the first marriage is held to exist, until it is established to have been dissolved.

907. — Doubt 4. If, in a positive doubt about the validity of a marriage, one doubts about an impediment, or about consent given, and the like, should judgment be rendered in favor of the marriage contracted? In external matters, it is undoubtedly to be affirmed, as the Doctors commonly teach. See Sanchez, book 1, dispute 48, number 5. But in the forum of conscience, some deny this, because in doubt, one has freedom from the obligation of marriage. But it is truer to hold the opposite, as Sanchez, number 6, Pontius, book 8, chapter 2, number 6, Elbel, number 146, and Tamb. Decretum, book 1, chapter 3, title "De Matrimonio" with Covarubias and Menochius, and the common opinion, teach. The reason is that, although a marriage may be only probably valid, its possession is certain; until there is proof of nullity, and when there is doubt (as we have said), one must always judge in favor of the validity of the act, as Palaus says, treatise 28, division 3, page 4, paragraph 9, number 4, Busembach, Elbel, book cited, and Croia, book 6, page 9, number 298, from "Quoties" in the canons on doubtful matters.

908. — To determine how one can be certain, or probably doubt, about the nullity of a marriage, three rules are given: The first rule is that, ordinarily speaking, a spouse is not bound to believe what the other spouse asserts about having fictitiously consented, even if that is affirmed under oath, according to chapters "Per tuas," on proofs, and "Cum a nobis," on witnesses and attestations, where it is said: "It is most unjust that anyone should be able to invalidate their own testimony by their own voice." It is said, ordinarily speaking: for otherwise it should be said, if, from the

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circumstances, it should be judged otherwise, for example, if the spouse is at the point of death, if he does not usually perjure himself, or if he is a pious person, and would like to separate or enter religion, etc.; then the other spouse has sufficient reason prudently to doubt; thus Bonagiunta, page 4, number 49, Daniel, 3, page of the treatise, rule 2, Sanchez, book 2, division 45, number 3, with Soto, Adrian, Paludanus, Sylvester, Navarrius, Anglus, etc., and Salm, on marriage, chapter 15, page 4, number 52, with Valentia, Diccionario Veritatis, and Led. The second rule is that if one hears from people not worthy of belief, or from a rumor originating from no certain author, about an impediment existing, one may lawfully contract marriage, or, after contracting it, render and seek what is due; because such a rumor or statement is not considered a reason for prudent doubt. Sanchez, numbers 89 and 32, etc., and also Salm, ibid., number 53, with Sylvester and Bonagiunta, book cited, number 20. The third rule is that the statement of a single witness worthy of belief about an impediment, or a public rumor from a certain author (as Sanchez, number 28, Daniel, Sylvester, and Salm, number 54, say), is sufficient to obligate one to inquire into the truth, and in the meantime to abstain from seeking what is due; because, when such ignorance is then vincible, it cannot have effect in doubt. However, this is not sufficient to obligate one to deny what is due; because, although it may be possible, one is not, however, bound to believe it.

[*Latin ed. p. 100*]

"Even a testimony, however worthy of belief, does not necessarily require one to believe, especially in matters of this nature. As stated in chapter [reference to a previous section on witnesses, etc., from Salm.], number 54. After due diligence has been exercised, one can rightly render [conjugal acts] and request them, as the same Salm. states ibid., number 48, along with Nav. Sylv. Ang. and Lopez, 909.

'III. If it is done with grave danger to life or health: unless there is a grave reason, for which bodily harm seems to be a secondary consideration, e.g., the danger of incontinence in oneself or one's spouse. Bon. p. 6, number 8. Perez, d. 50, s. 4, number 5. Doubt 4: Is it permissible to request [conjugal acts] with a danger to health, namely, if one of the spouses suffers from leprosy, syphilis, consumption, or another contagious disease? In itself, it is not permissible, since no one is the master of his own life or health; however, it is probable, as stated above with Bonaco and Perez, and Sanch. l. 9, d. 24, number 23, along with Cajet. P. Soto, Graff, and Boss. c. 4, number 495 and 209, along with Pont. Laym. and Reg., that if the disease is long-lasting and not immediately leading to death, namely, if it does not usually cause death quickly and easily, such as the plague or lepra leonina (in which limbs fall off), then it is not illicit for the healthy spouse to request [conjugal acts], if there is a just reason, namely, to foster conjugal love, or to avoid incontinence in oneself or one's spouse, because otherwise, it

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would be very burdensome to abstain from the use of marriage for so long, which could hardly be done without the danger of incontinence. However, it must be noted that a spouse infected with syphilis or a similar contagious disease cannot request [conjugal acts] from the other spouse who is unaware, unless they reveal their condition, and by revealing it, the other spouse may be able to find remedies for the disease; indeed, they cannot even render [conjugal acts] unless they do so with a clear intention. Hence, Bossius rightly states in c. 4, number 480, that one would sin in two ways if, suffering from syphilis, one committed fornication; and furthermore, would be obligated to compensate for the expenses of treatment. However, it is probable that women are excused from this compensation, unless they fraudulently concealed their disease. Therefore, a spouse infected with a disease cannot render [conjugal acts] unless they reveal their condition. However, they are not obligated to reveal it, because they are not obligated to fulfill their conjugal duty with such damage to their reputation: in all contracts, the most serious inconvenience excuses one from fulfilling the obligation, as stated by Tamb. l. 7, decision, c. 3, §. 5, number 23, along with Soto, as stated in a similar case, numbers 944 and 940.

It is not permissible to request [conjugal acts] immediately after bathing or venesection; for, as stated by Sanch. l. 9, d. 24, number 5, Bon. q. 4, p. 4, number 4, and Poss. c. 4, number 171, along with S. Ant. and Fill., intercourse at that time is notably dangerous. The same is stated by Bon. l. c., Pont. l. 10, c. 14, number 3, Sanch. number 3, Boss. number 170, along with others regarding one suffering from a fever. Croiae also states regarding a man cohabiting with a wife suffering from gonorrhea, that is, a discharge of semen; but some doctor assured me that such intercourse disturbs neither the man nor the woman to a great extent. Furthermore,..."

[*Latin ed. p. 101*]

It seems that intercourse should be prohibited when there is a continuous flow of blood, as this is often a persistent condition, and it would cause a serious inconvenience for the spouses to abstain from marital relations for so long, as mentioned in the case of a woman suffering from unnatural menstruation; see the aforementioned points, number 925. However, this exception does not apply if the flow is malicious; and even in this case, intercourse is excused if there is a risk of incontinence, both for the one who seeks it and for the one who grants it, according to the aforementioned points, number 925. A husband who is experiencing a seminal emission can always lawfully seek intercourse, because intercourse causes no harm to himself, to his wife, or to the child; thus, Sanch., book 9, chapter 41, number 9. It also seems not to be permissible to seek intercourse immediately after a meal, as Pontius states in book 11, chapter 14, number 3; Bonac., questions 4, page 1, number 6; Boss., chapter 1, number 171, with Palud. and Sanch., book 9, chapter 24, number 4, with Vega. Spouses are often excused from

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intercourse at this time, because intercourse often causes serious harm at that time, due to the crudeness or corruption of the food, which it causes. Saint Antoninus reports in page 1, title 1, book 16, section 10, that someone contracted phthisis (consumption) for this reason. But I say that if this were true, almost all spouses would become consumptive. However, the physicians whom I consulted, and experience, deny that there is such serious harm. Therefore, I would not dare to condemn a spouse who seeks intercourse after a meal, since these people commonly have intercourse after a meal or dinner. Nor would I excuse a spouse from intercourse on this basis, unless there is evidence that intercourse causes noticeable harm to himself or to the other; otherwise, it is certain that they are obliged to grant intercourse even with some slight impediment, according to the aforementioned points, number 950, see question 914.

Question 2: Is it permissible to seek intercourse during the time of lactation? Some deny it, as Butrius and Alex. de Nevo state in Boss., chapter 1, number 213; Imo Tiraq. and another author state in Sanch., book 9, chapter 22, number 13, that it is mortal; this is because in canon 5, dist. 5, D. Gregory says: "A man should not approach his wife for intercourse as long as the child is being weaned" (he should not, but it is not fitting, as Sanch. states); and because there is a fear of harm to the child in such intercourse, if the wife conceives. However, it is commonly affirmed that it is permissible, as Palud. states in page 4, number 14; Bonac. states in page 1, number 11; Pontius states in book 10, chapter 14, number 9; Salm. states in chapter 15, page 6, number 79; Croixa states in number 326; Holz. states in number 465; Elbel states in number 390; Sanch. states in book 9, chapter 22, number 14, with Rich. Turrecrec. Rosell. etc.; and Boss. states in chapter 1, number 214, with Con. Fill. Hurt. Leand. Vill. etc. The reason is that there is no law prohibiting it; as Sanch. states in number 16, Holz. states in the aforementioned passage, and Boss. states in number 215, the text of D. Gregory is only about counsel; also, because the risk of infecting the milk is rare, according to experience; at least not so much that spouses should be obliged to abstain from marital relations for so long, when there is a constant risk of sin. However, Pontius in the aforementioned passage and Bossius in number 215 make an exception if the spouses are very poor and there is a reasonable fear of serious harm to the child; in this case, (they say) neither is obliged to grant intercourse, and indeed, neither can seek it, even if there is a risk of incontinence.

[*Latin ed. p. 102*]

Concerning continence, for it is not permissible to consider one's own pleasure when it harms the innocent, when other means are available to restrain lust. Truly, St. Sanch. c. 45 excuses spouses from fulfilling their duty (as does Bonac. d. n. 44), but he does not dare to condemn the one who demands it, saying that in such a case, the spouse may either find

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another way to provide for the child, or there may be a just reason to expose the spouse to danger, so that spouses are not forced to abstain with such difficulty for too long. But do spouses sin against their offspring by seeking intercourse during the time of pregnancy, or during menstruation, or after childbirth? See paragraphs 924, 925, and 926. And what if the spouses suffer from leprosy? See paragraph 950. Is it permissible to have intercourse during menstruation? See paragraphs 925 and 942.

IV. If it is done for a wicked purpose, e.g., solely for the sake of pleasure; which, however, as commonly held by doctors, as St. Sanch. l. 9, n. 44, and Bon. q. 4, p. 6, consider to be only venial, contrary to Pontius, who wants it to be null; but it will be null if the pleasure is not sought, or if one excites oneself towards it, when the due intercourse is performed. St. Sanch. l. 9, d. 44, etc. See also Diana p. 3, t. 4, r. 216, Bonac. p. 6, M. Perex d. 49, s. 2, n. 6. It is certainly illicit to have intercourse solely for pleasure, as is clear from proposition 9, condemned by Innocent XI, which stated: "The exercise of marriage solely for pleasure is entirely devoid of guilt, and of venial defect." However, it is commonly held that this is not a mortal, but only a venial sin: thus St. Sanch. l. 9, d. 44, n. 4, Pont. l. 4, e. 21, n. 6 and 44, Boss. o. 7, n. 63, and others throughout, from D. Th. Suppl. q. 64, a. 6, where it is expressly taught. The reason why it is not mortal is that pleasure from an object can only be mortal in two ways: either because the object itself is gravely sinful, or because the person delights in it as the ultimate end; but in this pleasure, neither of these occurs: not the first, as is clear, nor the second, as is assumed. However, it is not excused from being venial, because it is a certain perversion of order, since the pleasure which is intended by nature as a means to generation, becomes the end of having intercourse. There will be no sin, as rightly say Croiac n. 296 and Viva de matr. q. 3, a. 2, n. 4, if the spouse primarily intends procreation of offspring, and uses pleasure (intending it moderately), to excite oneself to intercourse; just as one sins very little who intends moderate pleasure in eating, to provide the body with suitable nourishment.

943. V. If it is done with an adulterous mind, as if, while adding to one's own, one imagines another, in order to satisfy the mind, which is mortal. St. Sanch., Bonac. p. 6, n. 7. St. Sanch. l. 9, d. 46, n. 46, and Spor. n. 505, excuse the spouse who excited himself to intercourse, by delighting in the beauty of another person, but without a shameful affection; but they say that this is very dangerous and not to be permitted. Just as they do not permit—

[*Latin ed. p. 103*]

While I believe that, according to St. John Chrysostom in *Homilies to the People*, one can become excited for lust by looking at images of diverse persons, especially if they are sacred images, as Croxat rightly states in number 329, and that such an act is mortal, due to the grave irreverence, as St. John Chrysostom states in number 914.

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However, is it permissible for a husband to take pleasure in the thought of another person's sexual act, in order to excite himself for intercourse with his wife? On the one hand, it seems to be forbidden, since the object of his pleasure is, in itself, something impure. On the other hand, it does not seem to be entirely blameworthy for such a husband, since the illicit viewing of human sexual acts, or the pleasure derived from contemplating such acts, is forbidden, because in such viewing or pleasure there is a near danger of stirring up the spirits of those who are devoted to chastity; and since such intercourse is forbidden, consequently, the stirring up of the spirits is also forbidden; but for married couples, since intercourse is already permitted for them, it does not seem forbidden, at least in the case of a grave stirring up of the spirits, even though it may arise from that pleasure. However, I would not excuse such a thought if it were about an act between specific persons, because of the easy danger of consenting to pleasure in an act with another person's spouse.

Furthermore, because I have not found this matter discussed by anyone, I leave it to wise men to decide. However, what Arriaga believes to be permissible in *De Peccatis*, chapter 47, number 16, namely that it is permissible for a husband to take pleasure in the thought of an act between himself and another person, I completely reject, as Croxat states in number 534, because such pleasure is derived from an object that is intrinsically evil, and is entirely forbidden to the husband, as St. John Chrysostom states in number 948.

VI. If there is an improper inclination, for example:

1. If the natural function is not observed: which many teach to be true sodomy, while others consider it to be a grave sin against nature. See precept 6.

2. If the position is unnatural, absurd, etc., without a just cause: which some say is mortal, while others, if there is no danger of spilling semen, consider it to be only venial, although grave, and deserving of severe censure. See Diana, part 3, volume 4, question 204, number 8.

3. If one of the spouses hinders the act of procreation, for example, through laziness or other reasons: which some generally say is mortal, because the purpose of the marital act, namely procreation, is hindered; however, as Præp and Sanch. state, there is no such sin in the case of a woman. See Bon., page 6, number 15, and page 1, number 946.

Question I: Does a man sin mortally by beginning an act in an improper manner, in order to later complete it in the proper manner? Navarrus in *De Paenitentia*, book 5, council 7, and Ang. Zerola, Graff, Zanard, and Gam, as cited in Diana, page 2, volume 4, question 37, deny this, provided that there is no danger of pollution; because otherwise (as they say), all touches, even those that are venereal, are not gravely illicit between married couples. But Sanch. in *De Peccatis*, book 9, chapter 47, number 5, Pont. in *Decretum*,

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book 10, title 44, number 5, Pal. in *Summa*, book 4, section 2, number 6, Bon., page 14, number 42, Spor. in *Moralis Ecclesiastica*, number 497, Tamb. in *Summa Sententiarum*, book 7, title 3, section 8, number 31, and Boss. in *De Peccatis*, chapter 7, number 174, along with Fill., Perez, Aversa, Fagund, and Leand, commonly and more truly assert that such an act (even without spilling semen) is true sodomy.

[*Latin ed. p. 104*]

Although the act may not be consummated, as the very union in the natural vessel of another woman constitutes true fornication, even if there is no emission of seed. But is it a mortal sin for a man to touch the genitals of his wife in an unnatural position? Sanchez, number 5, and Bossuet, number 475, with Fillon and Perez, deny this, because touching the genitals in an unnatural position is not ordered towards sodomitic union. But it is more true, as also affirmed by Pontus, book 1, chapter 6; Palearius, number 6, Diana, page 4, treatise 4, rule 104, and page 5, treatise 7, rule 7; also Fagius, Leander, etc., apud Bossuet, book 1, chapter 7, and Tamburello, number 32 (who testifies that, according to some codices, the opinion of Thomas Sanchez has been deleted: indeed, Moya asserts that Sanchez himself retracted this in the Antwerp edition of 1614). The reason is that at least such a touch cannot be done morally without a sodomitic affect.

Question II. Do spouses sin when cohabitating in an unnatural position? The natural position is for the woman to be the *succuba* and the man the *incubus*; for this mode is more suitable for the effusion of male seed, and for its reception in the female vessel for the procreation of offspring. But an unnatural position is when the act is performed otherwise, namely by sitting, standing, from the side, or in the manner of beasts, or if the man is the *succuba* and the woman the *incubus*. This act, besides the natural position, is generally condemned by some apud Sanchez, book 9, chapter 46, number 2, as mortal, while others say that only the last two modes are mortal, saying that these are abhorrent to nature itself. But generally, others say that all these modes do not exceed venial sin. The reason is that, on the one hand, although there is some disorder, it is not so great as to reach the level of a mortal sin, since it only concerns accidental aspects of the union; on the other hand, the change of position does not impede generation, since the male seed is not received in the woman's womb by infusion or descent, but by attraction, as the womb naturally attracts the male seed; thus, St. Antoninus, 3, part, title 2, chapter 2, section 3, in fine, with Albinius, Moral Navigation, chapter 16, number 42; Pontus, book 10, chapter 44, number 1; Petricius, volume 4, page 445, verse 3; Salmeron, on Matrimony, chapter 15, page 5, number 73; Bossuet, chapter 7, number 68; Holzmuller, number 458; Sporer, number 493; Roncaglia, page 184, question 4; Crocius, number 332; Palearius, on Espousals, book 3, page 4, section 3, number 1, with Sanchez, book 9, chapter 46, number 3, with Gerson, Cajetan, P. Soto, Dominicus

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Soto, Sylvius, Arminius, Victorius, etc. And openly, St. Thomas favors this in 4, book 34, in fine, in the explanation of the letter, where he says: "But in the second mode (namely, changing the natural position), it is not always a mortal sin, as some say, but it can be a sign of mortal concupiscence." Therefore, according to St. Thomas, the change of position in itself is not mortal, but it can be mortal from a perverse concupiscence, such as from an affect of bestiality, or sodomy, or if such pleasure is taken as the ultimate end. Hence, the aforementioned authors commonly say, with the Council, page 403, number 2, that spouses sin least if they change position for a just reason, namely, because of the husband's illness, or obesity, or because of the danger of abortion, or scandal to others, and this is expressly stated by the Angelic Doctor.

[*Latin ed. p. 105*]

where he adds: "Sometimes it can occur without sin, when the condition of the body does not allow for any other manner; otherwise, the more it deviates from the natural manner, the greater the sin." Conversely, all agree (as Sanchez, n. 5, Palau, loc. cit., Bossuet, n. 471, etc., assert) that if it were proven by experience that, due to a change in the natural condition, a woman retains no seed, either because of excessive laxity or humidity of the vessels, or due to some natural infirmity, as Palau says, then such an occurrence would be mortal. However, Sanchez says that if such an emission occurs not due to a change in condition, but due to some disease of the woman, then it is not necessarily mortal. Sanchez, in n. 5, and Pontius, in loc. cit., Palau, in loc. cit., and Bossuet, in n. 471, along with Perez, Hurtado, and Aversa, state that it is not mortal if, due to a change in condition, only a part of the seed is discharged, and the remainder remains within the vessels, being sufficient for generation; which, according to Sanchez and Bossuet, sometimes happens; indeed, Palau and Pontius assert that it almost always happens, and they testify that doctors affirm this. However, the theologians of Salamanca, in *De Matrimonio*, chapter 45, page 5, n. 74, call this opinion too lenient, because, as they say, "to spill human seed without a reasonable cause cannot be excused from being mortal." They themselves, Sanchez, n. 5, and Sporer, n. 493, along with Aversa, state that it is not necessary to question a confessor who accuses his spouse of this, as to whether the seed was spilled or not, because it rarely happens that the seed is spilled. And so, I have often heard from those who confessed to me that they had foolishly cohabited. However, those who cohabit standing, or sitting, or with the woman lying down, I believe are in greater danger of spilling seed. But through this, I do not dare to condemn the opinion of Sanchez, Pontius, Palau, and others, as mentioned above, because they could respond to the theologians of Salamanca that, without a just cause, it is never permissible to spill seed, or (as the theologians of Salamanca should better say) to allow seed to be spilled, when the seed is spilled

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outside the woman's womb; but it is permissible when it is spilled within, and by accident, and not as a result of the very act of spilling, because then, as the aforementioned authors say, the womb already draws in what is sufficient for generation, and the remainder is expelled as superfluous. (1) Whether a spouse is obligated to grant the other's request for intercourse in an unnatural position without a just cause? See the statements n. 946, 918. — Question III. Do spouses sin mortally if they prevent conception during intercourse? The answer is: if both spouses agree to this, and there is no danger of spilling seed outside the womb, then, speaking in general terms, it is not mortal; for that penetration of the woman's womb is then considered like a touch that is permitted between spouses, which is either allowed, or at least is not mortal, provided there is no danger of pollution; thus, commonly states St. Antoninus, 3, p., title 4, chapter 20, § 6. Pontius, book 10, chapter 44, n. 9. Palau, (1) "Is it mortal to change the position, if, as a result of this, something of the seed is accidentally spilled? The theologians of Salamanca affirm this, but commonly Sanchez, Pontius, Castrén, Bossuet, Perez, Hurtado, and Aversa deny it." From *Homo Apostolicus*, part 18, n. 39, edition.

[*Latin ed. p. 106*]

Page 4, § 3, No. 3. Layman, Book 6, Section 4, No. 49. Good Questions, 4, Page 6, No. 45. Lessius, Book 4, Chapter 3, No. 55. Sporer, No. 490. Salm, on Matrimony, Chapter 45, Page 6, No. 82, with Aversa, and Dic. Bossuet, Chapter 9, No. 58, with Fill. Hurt, and Perez, and Sanch, Book 9, Title 49, No. 3, with Palud, Caj, Ang. Sa, Arm. Tasi, etc. I said 4, if both consent; for if one withdraws without the consent of the other, he certainly sins gravely, as all prudent authorities say. I said 2. Speaking of itself, for Sanch wisely observes, with Veracruz, that this is ordinarily mortal sin, because ordinarily there is a danger from such a withdrawal of spilling the seed, unless the spouses have experienced the contrary; in which case, however, I do not believe that they can be excused, in any way, even from venial sin, whatever Sanch says there, with others. But if the woman has already conceived, or is in a probable danger of conceiving, then the man cannot, given the act, withdraw from the act of generation without grave fault; because then he himself is the cause that the seed of his wife is wasted, as S. Antoninus commonly says, in the same place, Salm, on Matrimony, Chapter 45, Page 6, No. 84. Holzmüller, No. 451, and Sanch, No. 4, with Palud, Caj, Ang. Sa, and others, generally say. However, this is not so intrinsically evil that it cannot be permitted in any case, for example, if the man were to desist from the act because of the danger of death, or of scandal to others: then he can licitly withdraw, even with the danger of pollution, because this would happen accidentally, and contrary to his intention, and therefore, he is not bound to procure generation with the danger of such great harm; thus, Sanch, Title 4, No. 4. Palud, No. 5. Dian, 3, Page 4, line 204. Bossuet, No. 60,

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with Lessius, Aversa, and Perez, and Salm, in the same place, No. 84, with Caj, Dicast, Hen, etc. These things are certain among all. But if the man has already conceived, it is doubtful whether the woman would sin mortally if she were to withdraw from conceiving? Or does the man sin mortally if he does not expect the conception of his wife? The first opinion affirms, and this is held by Aversa, Hurt, and Ochagavia, in Bossuet, Chapter 9, No. 54, and Dian considers it probable, in Page 5, Treatise 44, line 37, and it seems that Taborsky and Arminius agree with Sanch, Book 9, Title 49, No. 5, who vaguely say that it is mortal sin if one spouse withdraws from the act of generation while the other is conceiving. The reason is, because (as they say) even the seed of the woman actively contributes to generation, as is the opinion of physicians Hippocrates, Galen, Valesius, and Peter Matha, in Sanch, Book 2, Title 24, No. 44, and of theologians Suarez, Volume 2, in 3, Page, Title 40, Section 4, verse. Secondly, it is inferred from the words: "The maternal seed is simply necessary for the conception of a child." Also, D. Bonaventure and Major, in Bossuet, Title 60, and Cajetan and others, in Sanch, in the same place, and Sanch and Bossuet themselves consider this opinion to be quite probable; at least (as Bossuet says), the seed of the woman greatly contributes to the perfection of the offspring, since it is at least ordained by nature for that purpose. The second opinion, however, which is more common, denies this, and this is held by Sanch.

[*Latin ed. p. 107*]

l. 9. d. 49, n. 9. Pont. l. 40. c. 44. n. 2. Bon. p. 6. n. 14. at Salm. ibid. n. 80. cum Caj. Henr. Dio. Veraer. etc. These authorities maintain a contrary position, namely that the semen of the woman is not necessary for generation, as asserted by Aristotle, Avicenna, Galen (who contradicts himself), and Hugh of Siena, and Alb. M. apud Sanch. l. 9. d. 17. n. 9, who states that this is the common opinion of theologians, with the exception of the Scotists. They do not object to the second opinion, which holds that the semen of the woman contributes to the perfection of the offspring; rather, they respond that the spouses are not obligated to generate in the most suitable manner, but it is sufficient if generation is not hindered. Although these authorities claim that the spouses are not obligated to wait for the woman's ovulation if the man has already emitted his semen, they nevertheless concede that he can continue the act until the woman ovulates, because this pertains to the completion of the marital act, as held by Pont. and Dian. ll. ce. Bon. n. 14. cum Caj. et Sanch. d. 47. n. 41. cum Tab. et Graff. contra Henr. (ap Bon. l. c.), who believes that the man is not obligated to wait for the woman's ovulation, because there is a risk that generation will be prevented thereby, which does not seem sufficiently probable, nor coherent. For if such a risk existed, he should not have said that it is not obligatory, but that it is impossible, which no one asserts; indeed, no one puts forward this risk. But returning to the first question, although the

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second opinion may be more common, I believe, as does Boss. l. c. n. 52, that the first opinion is sufficiently probable, and therefore should be followed in practice. The reason is that it is not permissible to follow a probable opinion to the detriment of a third party; but when the detriment concerns the offspring or generation against nature, which has the right not to be hindered, since the marital act was instituted for this purpose, therefore, when there is a risk of hindering generation, it is not permissible to follow a probable opinion; for, as we have said (l. 4. n. 42), we are not dealing with the honesty of the action, but with the truth of the matter, and it is illicit to follow a probable opinion for the sake of freedom, contrary to another opinion that stands for the law. Hence, it is not permissible in practice, even if it is probable, as stated by Sanch. n. 5. and Spor. n. 494. with Perex, Escob. Dio. and Gob., namely, that a woman, during the act of copulation, can divert her mind to other things, so as not to be aroused to ovulation. Furthermore, can a woman, if the man withdraws after he has emitted his semen, but before the woman has ovulated, immediately excite herself through touch, so that she may ovulate? The Author Addit. ad Wigandt tr. 46. post n. 406. and Dian. and Rodr. apud Boss. l. 9. n. 54, agree, and Pal. p. 4. 4. §. 3. n. 6. (stating that this is not permissible, if the woman could restrain herself). The reason is that the semen of the woman is not necessary for generation; also, because that emission of the woman, being separate, does not result in the formation of flesh with the man. However, Wigandt tr. 46. n. 103. v. Solve. Less. l. 4. o. 3. n. 94. Bon. q. 4. p. 6. num. 15. in fin. with Sanch. l. 9. d. 47. n. 40, commonly affirm.

[*Latin ed. p. 108*]

Pot. t. 4. c. 4. n. 4310. Tamb. Dec. l. 4. c. 3. §. 5. n. 48. Salm. c. 45. n. 80. in fin. cum Dic. Fill. tr. 40. n. 330. Spor. n. 494. Boss. cap. 9. n. 55. cum Aversa, Perez, Fag. et Leand. ac Elbel p. 479. n. 425. cum Cleric. Homob. Dian. Gob et Bosco, et non reprobat Conc. p. 406. n. 44.

Reasoning: This is permissible because the act of a woman preparing herself through touch is related to fulfilling the conjugal act, which consists of the procreation of offspring from both spouses; therefore, just as a wife can prepare herself for intercourse through touch, she can also complete the act of intercourse. Furthermore, if women were forbidden to restrain their nature after such stimulation, they would constantly be in great danger of mortal sin, since men, being more heated, more frequently procreate (but this reason is not persuasive, for if this were permitted to wives, it should also be permitted to husbands, in the case where a woman, after her procreation, withdraws, and the husband remains stimulated; but the Doctors commonly say that this is forbidden to men, as Sanch. n. 10, Wigandt and Bon. state in the same place). Finally, as many believe, the procreation of a woman is necessary, or at least greatly contributes to generation, and nothing is done against nature. All concede that wives of a colder nature

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can excite themselves through touch before intercourse, so that procreation may take place immediately during marital relations. See Conc. n. 43, 920.

VII. If in an improper place, e.g., a sacred place, which is violated, or in a public place (See the statements on this point in l. 4. n. 458, where we said with Nav. Vasq. Tol. Azor, Con. Pont. etc., that it is probable that no sacrilege is committed, nor is the Church polluted, by a conjugal act concealed within the Church, unless there is a necessity, as Suar. Sanch. Less. Bonac. Holzm. Croix, Salm. etc. teach. Although, in that case, clerics are not obligated to abstain from celebrating divine offices there, unless that intercourse is made public, as the same authors say, and it is proven in this book, l. 6. n. 364, because the Church is not considered polluted with regard to the celebration of offices, unless the crime is notorious by the fact itself).

921. *VIII. If without an urgent cause, it is done at an improper time, 1. in a* great solemnity, such as Easter, or the day before Communion. See Per. d. 49. s. 3. 2. When the wife is pregnant, at least if there is a danger of* abortion. Nav. Sylv. Sanch. Conc. Fill. n. 337. For if this is not the case, it* will not be at least a mortal sin; for what is frustrated in its purpose at that time* does not necessarily follow from the act itself. Therefore, Dian. p. 3. tr. 4. r. 204, and Con. d. 34. dub. 9, do not recognize any sin. 3. When the wife is suffering from* a menstrual flow. However, this is not mortal, contrary to what Azor teaches, as Sanch. l. 9. d. 24. n. 2 states. Indeed, some, as in Dian. l. c., as well as Pont. l. 10. c. 44, and c. 44, num. 5 and 6, teach that it is not even venial, if there is an urgent danger, which Sanch. l. c. teaches is probable; and M. Perez adds that if it is done for an honest purpose, there is no sin; and that the wife should render her due to her husband, if the husband demands it. See dist. 49. s. 3.

[*Latin ed. p. 109*]

922. — Question. I. Is it permissible for a married couple to cohabit on the day of Communion? See what we have said more fully on this matter in book 6, numbers 273 and 274, where we stated that it is venial sin to approach the Eucharist on the day of marriage if the act was performed for pleasure, unless there is a reasonable excuse. However, if the act was performed for the purpose of procreation, or even to avoid incontinence, then it is merely a matter of counsel to abstain from Holy Communion, according to canon 7 of the Council of Trent. And likewise, it is a matter of counsel to abstain on the day on which the spouse has fulfilled his duty; but from this duty, in the ordinary course of events, one cannot be excused for the sake of Communion, for sometimes honest prayers may be resisted. What, however, should the confessor answer to a spouse who asks whether he is obliged to perform his duty on the day of Communion? See number 274 above. After Communion has been received, there is no sin in performing the act. Whether it is permissible to request it, some say it is a venial

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sin; others say it is no sin at all; see there. Regarding the day.

923. — Question. II. Is the marital act illicit on festive days, or during periods of fasting, or on days of prayer? It is commonly held that it is not forbidden to perform this duty at such times, as stated in *Decretum Tridensinum*, Supplement, question 64, article 7: "Since the woman has power over the body of her husband, and conversely, each is bound to render to the other what is due at any time and at any hour." However, is it forbidden to request it? The first opinion affirms this, and this is held by *Decretum Tridensinum*, book cited above, article 4; St. Antoninus, 3, part, title 4, chapter 20, section 14; Council of Trent, session 10, page 395, number 40; also, *Sententiae Magistrorum*, Alb., M., Palud., Gers., Sylv., etc., as cited by Sanchez, book 9, title 42, number 3. However, this is under a venial sin, as stated by *Decretum Tridensinum* with others: not under a mortal sin, as some improbably hold, as cited by Sanchez, because the sacred time is not a circumstance that changes the nature of the sin, and therefore it cannot be aggravated indefinitely. The reason why it is a venial sin is given by the Angelic Doctor, who says: "The marital act, although free from sin, nevertheless, because it diminishes reason through carnal pleasure, renders a man unfit for spiritual things. And therefore, on days on which one should devote oneself especially to spiritual matters, it is not permissible to request the marital act." The second opinion, which is more common, holds that it is not illicit, and this is held by Sanchez, book 9, title 42, number 5, with St. Bonaventure, Cajetan, Soto, Anglerius, Valentinus, etc.; also, Pontus, book 10, chapter 9, throughout; Palatine, page 4, section 4, number 5; Bonaventure, question 4, page 6, number 28; Salmeron, *De Matrimonio*, chapter 45, page 5, number 58, with Henry, Dictionary of Canon Law; Concilium Aversa; Led; and Bossuet, chapter 7, number 84, with Azor, Regius, Fillius, Perez, etc. The reason is that it is not forbidden by any law, whether divine, because on festive days only servile works are prohibited; nor ecclesiastical, because on festive days and during periods of fasting, even with marital intercourse, spouses can well observe those things that are commanded. If canons and the Fathers seem to expressly prohibit the use of marriage on those days, these authors say that this should be understood as a matter of counsel, not of precept, as Sanchez argues with the Glossary on the canons, and other interpreters.

[*Latin ed. p. 110*]

924. — Question III: Is it permissible for married couples to have intercourse during the time of pregnancy? It is generally not considered a mortal sin, unless there is a danger of abortion; thus, all agree with Sanchez, *l. 9, d. 22, n. 3*; Pontius, *l. 40, c. 14, n. 7*; Palatinus, *p. 4, §. 4, n. 12*; Salmeron, *de mat., c. 4, p. 6, n. 78*; Roncaglia, *p. 184, q. 3, r. 2*; and Bossuet, *c. 9, n. 33*, citing St. Augustine in *De bono conjugali, c. 6*, who writes: "For marital intercourse, intended for procreation, is not sinful; but intercourse

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solely for the satisfaction of lust, and yet with one's spouse, because of the bond of faith, is venial sin." St. Ambrose teaches the same in *Luc., c. 4*: "But men do not harm the conceived child, nor do they offend God; rather, they harm the child, and offend God." Note that he says "harm"; therefore, St. Augustine implies the danger of abortion. Also, St. Jerome in *Hieronymus, in can. Origo, caus. 32, quæst 4* writes: "As soon as the womb is swollen, it does not lose its children." Furthermore, St. Thomas in *4. dist., 81, in fin., in expos. litt.* writes: "Therefore, Jerome condemns the approach of a man to a pregnant woman, but not always as a mortal sin, unless, perhaps, when there is a probable fear of the danger of abortion." Sylvester and Tabernaeum, cited by Sanchez, *loc. cit., n. 4*, argue that there is a danger of abortion if intercourse occurs at the very beginning of conception, because the material is not yet fully formed, and is easily dispersed; for although the womb immediately closes after conception, as Avicenna says, it is sometimes opened by the violent pleasure of intercourse, and the material is expelled. However, Pontius, *dict. n. 7*; Palatinus, *n. 44*; Sanchez, *n. 4*, with Anglerius and Sylvester (contrary to Tabernaeum), and Bossuet, *n. 48*, with Fillon, Hurt Perez, and Raynaud, argue that intercourse with such a danger is not considered mortal sin, because (as Sanchez and Bossuet say) since the material is not yet formed, and the spouses are working for a licit purpose, exercising their right, provided they do not intend an abortion, this damage is not so great as to constitute a mortal sin. But this reasoning does not seem convincing to me, because when life, or the formation of a child, is harmed by the act, the spouse does not have the right to the act. Rather, it seems more correct to say that there is not such a danger, because (as the same Sanchez, *n. 7*; Palatinus, *n. 44*; Bossuet, *n. 48*; Holzmüller, *p. 463*, with Illsung and Bonaventure, *q. 6, part. 6, n. 12*, with Contenson and Regius) commonly there is not such a danger, since the womb, having received the seed, is tightly constricted, and is not ordinarily opened by intercourse, as Avicenna and Valverdi say, citing Bossuet. Furthermore, if spouses approach indiscriminately, and yet an abortion does not occur, as Bossuet says, "as long as it is not proven by experience that a wife has miscarried after intercourse, the danger of abortion should not be presumed." Even less would there be such a danger if intercourse occurs at a time close to childbirth, as some have wrongly said, believing that the child is then exposed to the danger of suffocation; for it is truer (as Bossuet says, *n. 30*, with Raynaud) that the human fetus is so closely enveloped that the seed cannot reach it. Therefore,

[*Latin ed. p. 111*]

Peter, in 1 Timothy 4, page 447, states that the danger of abortion should not be readily presumed; and therefore, spouses should not be troubled with insistent questions about abstaining from intercourse during pregnancy. For what hope is there that such questions will prevent concep-

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tion? And what danger is to be feared if they are disturbed in their good faith? However, if the danger of abortion is absent, is it a venial sin to have intercourse with a pregnant woman? Doctors Ant. 3, page 1, title 1, chapter 20, section 4, as well as Sotus, in *Palud. Alens. Palao*, quoted by Sanch. in *d. d.* 22, number 4, affirm that, when a woman is pregnant, the semen is frustrated of its generative purpose. This is confirmed by the authority of many holy Fathers. However, Sanch. in the aforementioned place, numbers 6, as well as Gabr. and Henr. Bon. in page 6, number 14, with Fill. Pal. in page 4, section 4, number 12, Ronc. in page 154, question 3, response 2, Holzm. in number 463, Eldel in number 390, and Salm. in *de matr.* chapter 15, page 6, number 78, with Duo. Aversa, and Diana, argue that there is nowhere that this is held to be inherently forbidden, and that it would be a very grave burden, and the matter would be exposed to countless dangers of venial sin, if spouses were to be compelled to abstain from the use of marriage for so long, remaining in the same bed. They respond to the opposing argument, stating that, for intercourse to be licit in marriage, it is sufficient that the act itself be suitable for generation; and that the actual conception does not necessarily occur by accident. Furthermore, I find pleasing the opinion held by Pont. in book 10, chapter 14, number 7, Azor, in volume 3, chapter 34, question 14, Boss. in chapter 9, number 36, with Guil. Paris, Perez, Con. Barbos, Fill. Hurt, Avers, etc., and to which Pal. and Ronc. also adhere, namely that intercourse with a pregnant woman cannot be excused from venial sin unless there is a danger of incontinence, or some other honest reason, as stated in numbers 682, doubt 1, etc. 925.

Question IV: Is it licit for spouses to have intercourse during menstruation? It should be noted that a woman's flow can be either natural and ordinary, or it can be properly called menstrual, because it commonly occurs in women each month, and lasts for two or three days. The other type is extraordinary, arising from some chronic illness, which sometimes lasts up to 12 days or more. During the time of extraordinary flow, it is certainly licit to both give and receive intercourse; so commonly state Sanch. in book 9, section 21, number 1, Pont. in book 10, chapter 14, number 5, Holzm. in number 462, Salm. in *de matr.* chapter 15, page 6, number 76, and Boss. in chapter 9, number 43, with Azor, Reb, Fill, Hurt, etc., from Doctors Th. in 4, section 32, question 1, article 2, where he expressly teaches this, and gives a reason, saying: "In the case of unnatural menstruation, it is not forbidden by the new law to approach a woman who is menstruating, either because the woman in such a state cannot conceive; or because such a flow is perpetual and prolonged, so that it would be necessary for the man to abstain perpetually." However, there are three opinions regarding the time of natural flow. The first opinion condemns intercourse as a mortal sin, and this is held by the same Doctors Th. in the aforementioned book,

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question 3, response 4, where he says that to sin during this menstruation.

[*Latin ed. p. 112*]

Mortally, both the man who voluntarily seeks the woman, and the woman who voluntarily yields, are culpable; unless the woman is compelled to perform this act. Saint Bonaventure, Alexander of Hales, and Scotus, in Tabulae Palatinae, etc., as cited by Bossuet, chapter 9, number 46, support this view. This is proven in four ways: 1) from Leviticus, chapter 20, verse 18: "If any man lie with a woman in her flowers, and uncover her nakedness, and she open the fountain of her blood: both shall be destroyed out of the midst of their people." 2) Sanchez, in his commentary, chapter 2, and Bossuet, number 46, object that this law was ceremonial and therefore does not obligate under the law of the Gospel. However, it is responded by the Doctor of the Church in his Dicta, question 2, that although that precept was ceremonial with regard to impurity, it was nevertheless moral with regard to the harm (the words of the Doctor), which frequently followed from such a union in the offspring. 3) It is proven from canon 1, in distinction 5, where Pope Gregory states: "With and without just cause, wives who are in their usual menstruation are forbidden to mix with their husbands." 4) By reason, because the offspring born at that time is exposed to the danger of being born with leprosy and monstrous deformities; and because there is the danger of spilling the seed in vain, since rarely, or never, is the woman at that time fit for conception.

A second opinion, entirely opposed, states that intercourse with a menstruating woman is entirely without guilt; this view is held by the Glossa in canon Si Caus., question 14, number 33; by Perez, Fillius, and Hurtado, as cited by Bossuet, number 20; and by Sanchez, in his commentary, book 9, distinction 21, number 7, who considers this opinion equally probable as the third, which we will soon present. The reason given is that today, this is forbidden by no law; not by divine law, since the law of Leviticus, with the coming of the new law, has ceased. They do not object that the prohibition has not ceased, insofar as it was moral to avoid harm to the offspring, because they respond that Saint Jerome, in chapter 48 of Ezekiel, states that the reason for the prohibition in Leviticus was that, at that time, due to the menstrual blood, offspring were born with leprosy and elephantiasis; but today, it is uncertain that such harm exists, and it is much more certain that a woman does not conceive during her menstruation, as Sanchez, Palearius, Bossuet, and Salomon state in their commentaries. Finally, even if she does conceive with some harm to the offspring, Sanchez, in his commentary, book 9, distinction 21, number 7, and Bossuet, chapter 9, number 22, state that this does not invalidate the act, because it is better for the offspring to be born, even with some defect, than not to be born at all; for perhaps, otherwise, it would never have been born, or it would not have been the same offspring, from which the offspring receives a benefit, not a harm.

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It cannot be said that, even if no harm is done to the offspring, at least harm is done to nature, which demands that offspring be generated in the most convenient way: because they respond that if no harm is done to the offspring, no harm is done to nature. Therefore, it is not forbidden by divine law; nor by ecclesiastical law, because in response to the text of Gregory, Pontius, in his commentary, book 40, chapter 14, number 6, states that the ecclesiastical prohibition is now obsolete; indeed, the words of the Pope, "are forbidden," are explained by others, as stated in the Glossa there: "are forbidden," that is, they are dissuaded from under the form of a prohibition.

[*Latin ed. p. 113*]

By natural law, it is true that there is a risk of failing to conceive at that time, but it is not required that generation follow from the act in order to justify intercourse; it is sufficient that the act itself be suitable for generation, even if, by chance, the seed is dispersed, as happens in the case of intercourse with a pregnant woman or a sterile woman. Nor, they say, is there any culpable indecency present in such an act, for (as Perez says) it is rather material. Therefore, they conclude that spouses do not sin in any way if they have intercourse at that time, not already from the affection of lust (which cannot be excused by venial sin), but in order to exercise their right with moderate pleasure. A third opinion, which is the most common and more probable, states that intercourse during menstruation is not mortal, but is not excused from venial sin; thus, St. Antoninus, 3rd part, title 4, chapter 20, section 3; Nav. chapter 46, number 32; Council, page 398, number 20; Pont. book 40, chapter 14, number 6; Pal. page 4, section 4, number 8; Ronc. page 184, question 3, response 3; Holzm. number 462; Bonac. page 6, number 9, with Henry Led. and Rodriguez Salmant. on marriage, chapter 45, page 6, number 76, with Aversa, Vivaldi, Cornejo, and Soto; Boss. chapter 9, number 22, with Sa, Con. Pal. Reg. Vill. Vega, Graff, etc.; and Sanch. dictionary, 21, number 5, with Cajetan, Abulafia, Arminius, and Lopez. That it is not mortal is demonstrated by the reason given above for the second opinion. That it is venial is demonstrated because such intercourse, in which spouses do not wait for a time more suitable for generation, and which will soon arrive, involves a certain impurity and disorder, since the woman is then unfit for the proper reception and retention of the seed, and therefore the intercourse is less suited to the purpose of generation. Nav., Pal., Sanch., Salmant., and Boss., number 45, with Hurtado, agree that there is no sin in having intercourse at that time if there is some reason to excuse that impurity, namely, to avoid discord, or incontinence in oneself or in the other, or other similar reasons. But in the case where no such reason is present, can a menstruating wife, if warned, refuse to fulfill her duty? Pal., page 4, section 4, number 9, with Con. Salmant. on marriage, chapter 45, page 6, number 77, and Sanch., 21, number 96, with Palud.,

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Soto, Led., etc., affirm this, citing also D. Th., 32, article 2, question 3, for their own position, but this is not well done, as we will soon see. It is more probable to deny this, as Pontius, chapter 14, number 5, and Bon., page 6, number 10, state, citing Sylv. Reb. and Henry Ratio. For since the spouse is bound by a venial fault from the act itself, it is more probable that the spouse is not bound, and cannot lawfully fulfill her duty; see the remarks, number 946. Nor is our opinion contrary to D. Th., for in the book cited, in the response to the 3rd question, it is said that the wife can and must fulfill her duty when a greater danger would be feared in not doing so. But this is not the case in our situation.

926. — Question V. Is it illicit to have intercourse during the postpartum period of purification? It is certain that spouses are not today required to observe the period of purification prescribed in Leviticus 12:4, where, when a woman was separated from

[*Latin ed. p. 114*]

For forty days after childbirth, and eighty days after the birth of a male child, it appears that conjugal relations were also forbidden. But this precept has now ceased, and just as mothers are not required to abstain from entering the Church, as stated in chapter one concerning purification after childbirth, so too are they not required to abstain from conjugal relations, as commonly stated by Sanchez, book 9, title 22, number 8; Bossuet, chapter 7, number 430; and others throughout. Saint Antoninus, book 3, part 1, chapter 20, section 4, adds, however, that nevertheless, a woman can rightly abstain from attending Church and hearing Mass during this time, or at least for six weeks; as Sporer and Elbel testify, see the aforementioned book, 4, number 330. Concerning the question of whether this act is a mortal sin, there is a threefold opinion. The first opinion states that it is a mortal sin, and this is held by Butrius and Alexander de Nevo, as cited by Sanchez, book, chapter, title 22, number 9. The reason is that, as stated in the cited chapter, at the end, Dist. 5, Saint Gregory expressly forbade this, saying: "Until the time of purification has passed, they should not join themselves to their husbands." Furthermore, harm is done to the child if it is conceived at that time, as Galen says, as cited by Pontius, book 40, chapter 14, number 8. The second opinion states that there is no sin, as Sanchez, number 44, states, along with Anglus, Henricus Palatinus, Turrecremata, Holzmüller, number 464, and Fillius, Perez, Villalobos, and Hurtado, as cited by Bossuet, chapter 9, number 42. Because, they say, this impurity is only material, not moral. The third opinion, which is more probable and more common, and which is held by Saint Antoninus, book, chapter, along with Richardus and Petrus de Paludibus, Pontius, Dist. number 8, Palatinus, part 4, section 4, number 46, Roncaglia, part 184, question 3, response 3, Bossuet, number 44, along with Azor, Ochagavia, and Ledo, as well as Soto, Paludanus, Tabulas, Lopiz, etc., as cited by Sanchez, number 40, states that it is a venial sin,

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but not a mortal sin in itself. It is a venial sin because such intercourse contains some indecency; therefore, unless there is a good reason, namely, the danger of incontinence, or discord, or something similar, it cannot be excused from all guilt. However, it is not a mortal sin in itself, because such indecency does not seem to be so great as to incur mortal guilt. In response to the prohibition by Saint Gregory, Pontius states that it has been abolished today; but Saint Antoninus, along with Guillaume, states that it was a matter of congruity, not of precept. In response to the reason of harm to the child, it is said that such harm does not occur, because it is difficult for a woman to conceive at that time; or, if it does occur, it will not be serious. It is said in itself, because it can sometimes be a mortal sin, if a serious illness, or a significant worsening of an illness, threatens from the intercourse, as Saint Antoninus and Sanchez, number 44, state, along with Paludanus, Sylvestrus, and Anglus, etc. Such a danger can also be prudently feared, as Roncaglia says, if intercourse is had immediately after childbirth, namely, on the same day or the next, as a very experienced doctor assured me. 927. — From the foregoing, it follows that it is permissible to have intercourse: 1. For the sake of procreation, even though this should not necessarily be intended, provided that it is not positively prevented. Indeed, even if...

[*Latin ed. p. 115*]

When, with a simple intention, it is lawfully excluded, e.g., from a poor person, lest it unduly burden them. II, to avoid the danger of incontinence in oneself, or in one's spouse. Mart. Perez, d. 40, s. 2, from Conin. Pont., Hurt., etc., against Sanch., who wants it to be venial, unless the carnal impulse can otherwise be restrained. ▪ See the statements in n. 882, dub. 1. For the same boundaries that one is permitted to have in order to enter into marriage also regulate the request for intercourse. ▪ III. For the sake of health, or for other external reasons: because what is honest in its nature, and related to one end, can lawfully be referred to another end that is not contrary to it, as taught by Sa, Conin. Laym., l. 5, t. 40, p. 3, c. 4; Mart. Perez, d. 49, sect. 2, n. 4. See Diana, p. 2, t. 4, r. 218. However, to use it solely for the sake of health is likely to be venial, as taught by S. Th. Laym., l.c., against Mart. Per., etc., ll. cc. (See n. 883, dub. 2.) 928. — Here is asked: I. Is a man ever obligated to request [intercourse]? In itself, he is not obligated to request; rather, he is obligated by accident, namely, if the wife tacitly demands it; for example, if she shows some indication by which she signifies a tacit request; because in women, due to their innate modesty, such signs are considered as a true request, as commonly stated by Sanch., l. 9, d. 2, n. 3, and others from D. Th., Suppl. 4, p. q. 44, art. 2, where: "When a man perceives through certain signs that his wife would like to have her due, but because of modesty she remains silent..., he is obligated to grant it." Conversely, Sanch. correctly states, n. 5, with Soto and Palac., from the same D. Th., in 4, d. 32, qu. un., art. 3, ad 2, that a woman is not obligated to grant [intercourse] to her

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husband, unless he expressly requests it; for since it is not shameful for men to expressly demand, women can reasonably assume that husbands who do not expressly request are unwilling to obligate them to request. Indeed, I believe that it is not possible for a husband to obligate a woman to request, given her great shame. However, Sanch. correctly adds, l.c., with S. Anton., Nav., Sylv., and Manuel, unless such shame is sometimes rather presumed to be on the part of the man, rather than the woman, for example, if she were of great authority, or of savage character, and the man were very timid and modest. However, regularly (as Sanchez rightly adds), the wife is not obligated to grant [intercourse], unless it is clearly known to her that the husband is of this timidity and modesty. 929. — Question II. Is a wife ever obligated to request [intercourse]? It is certain, firstly, that a wife is ordinarily not obligated to request, because this is notably immodest for women. It is certain, secondly, that when one spouse is in danger of incontinence, both the husband and the wife are obligated to request, in order to free the other from danger; as commonly stated by Pontius, l. 40, c. 2, n. 3; Sanch., l. 9, d. 2, n. 9, with Soto; Adr., etc.; and Boss., c. 1, n. 17, with Fill. Henr., etc. But it is doubtful whether the wife is obligated to request then out of charity, or out of justice? The first opinion, which is held by Pontius, l.c., and Boss., n. 24, with...

[*Latin ed. p. 116*]

Led. Henr. Dian. and P. Soto say that it is held by justice. The reason is that, since spouses are bound by justice to maintain the bond of faith, when one is in danger of incontinence; then it is not a request, but rather a fulfillment of a duty, because the necessity arises to preserve the bond of faith by avoiding the incontinence of the other; therefore, in such a case, it is rather a fulfillment of a duty than a request for something owed. This is confirmed by an example: if a physician is bound by contract to heal a patient, he is bound by justice to provide him with the medicine, even if the patient does not ask for it. And this opinion seems to be held by St. Thomas in *Supplementum*, question 49, article 5, in the second place, where he says: "If someone intends, through the act of marriage, to avoid fornication in his spouse, there is no sin, because this is a certain fulfillment of a duty, which pertains to the good of the bond of faith." The second opinion, which seems more probable, and which is held by Sanch. in *dicta*, number 2, paragraph 7, along with Palud. and Durando, and Conin. in *apparatus* to Bossuet, number 22, says that it is held only by charity. The reason is that, where there is no expressed or implied request from the other spouse, there is no obligation of justice to provide something. However, it is indeed part of the good of the bond of marriage that a spouse should not commit adultery, but it is not required that the other spouse should prevent adultery; although this may in some way pertain to the good of the bond of faith, it does not pertain so strictly that it obliges by justice to make a

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request; therefore, St. Thomas does not call this type of request an absolute fulfillment of a duty, but rather a certain fulfillment of a duty; and the Saint brings this up only to excuse the one who makes the request, if he makes it to avoid incontinence in the other, but not to obligate him to make the request. The example of the physician does not apply: the physician is indeed obligated to provide medicine to the sick person who does not ask for it, because he is bound by contract to care for him; but the spouse is bound to maintain the bond of faith, not to prevent the other from breaking it. From this opinion, it follows that a spouse, when not bound by justice, but only by charity, in such a case, is not bound to make a request if it would cause great discomfort: therefore, it is probable that the wife may be excused from making a request, if she would have to endure great shame in doing so.

930. — Question III. Can a spouse who is prohibited from making a request by reason of a vow, or by affinity or spiritual relationship contracted after marriage, sometimes lawfully demand what is due? This is generally admitted by the Doctors, along with Sanch. in *liber*, 9, number 7, paragraph 5 (who cites Jo. Andr. Præpos. Adrian. Vict. etc.), if there is a danger of incontinence in the other spouse: indeed, Bossuet says in chapter 1, number 264, and Sanch. in number 41, along with Pet. Soto, Henr. Palac., Angles, that in such a case, it is necessary to make the request, because this obligation arises from the very institution of marriage. Also, it is generally admitted by St. Thomas in 4, number 38, question 1, article 3, Bossuet in chapter 1, number 264, and Sanch. in number 8, paragraph 1, along with Sa. Sylv., Ang., Turrecremata, Henr. Led. etc., that a spouse who is prevented from making a request can make it, if the other spouse explicitly demands it, that is, when the woman is, as St. Thomas says, modest, and the man perceives her will regarding the fulfillment of the duty. In such a case, the spouse who is prevented can offer himself, because in such a case, it is rather...

[*Latin ed. p. 117*]

It is proper to offer oneself to one's spouse, rather than to demand it. How often is it permissible to do so? Led. apud Sanch. states that it is permissible four times in the month; but it is better, as Boss. n. 260, and also Sanch. with Victoria, say, that it should be considered according to the circumstances, namely, according to the greater or lesser inclination of the other person towards Venus. Boss. n. 263, and Sanch. n. 2, with Ang., maintain that it is not permissible for a husband who is bound by a vow to offer himself to his wife for intercourse, when the wife has granted him permission to vow chastity, because in that case, unless (they except the case where the husband requests it for her sake; Sanch. and Bossius, contrary to Coninch. and Pal.) the wife would be in danger of incontinence; in which case, they say that the one who has vowed is bound to request

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it, by an obligation arising from the very institution of marriage, as stated above. But is it permissible for a spouse who is bound by an impediment to request intercourse, if that spouse is in danger of incontinence? Viguerius and Quint. apud Boss. n. 262, affirm this, especially if the impediment is due to affinity or spiritual relationship, and a dispensation cannot be easily obtained, and there is danger in delay, because ecclesiastical law does not bind in such a serious matter. However, Sanch. n. 7, with Guttier. and Cov., and Boss. n. 262, with Coninch. etc., deny this, because the danger of incontinence is indeed a just cause for a dispensation, but not for intercourse. But the first opinion, with respect to an impediment imposed by the Church, does not seem to me to be improbable, if indeed a dispensation cannot be obtained quickly, and there is great danger in delay; and this is further confirmed by quest. seq. 934. — Question IV: Is it permissible for a spouse who is excommunicated to demand the marital debt, and is it permissible for an excommunicated person to demand it? It is certain that it is permissible for a spouse to demand it from one who is excommunicated, from c. Quoniam multos, caus. 14, q. 3, where Pope Gregory VII expressly grants this. But is it also permissible for an excommunicated person to demand it? The Gloss. in c. cit. v. Uxores denies this; and Archid. Sylv. Lop. and Tab. apud Sanch. l. 9, d. 14, n. 19, seem to agree, because in the bulla Martini V. Ad evitanda, no privilege is granted to excommunicated persons, as far as communication with the faithful is concerned. But generally and more truly, Suar. de censur d. 45, sess. 4, n. 9, Bon. eod. tit. 2, d. 2, p. 6, §. 2, n. 20, Sanch. n. 20, with Henriq. and Ugol., and Boss. c. 4, n. 282, with Palud. Sayr. Con. Avila, Fill. Bordon. etc., affirm this. The reason is that ecclesiastical law does not bind in such a serious matter, in which the person would indeed be excommunicated, if he could not be separated from the other spouse (as is indeed the case), and could not demand intercourse. 932. — "Questions: Is it permissible, and when, for spouses to have lascivious touches, looks, and words? Answer: Such acts are permissible to them in themselves, because what is licit for the end, is also licit for the means, and what is licit for consummation, is also licit for the beginning. Therefore, it is permissible to excite nature towards copulation by such means. But if, separately, and without order towards copulation, for example, only for the sake of pleasure; they are venial sins, because of the reason of the state, which requires these acts to be done in harmony with—"

[*Latin ed. p. 118*]

They have the right to those [goods], unless, as often happens, they are joined to the danger of pollution, or the spouses have a vow of chastity; in which case, they are mortal sins, as stated above, book 4, treatise 4, chapter 2, paragraph 4. Diana, page 3, treatise 4, rule 204 and 246.

Undo resolveg:

1. A spouse commits only a venial sin by touching oneself out of lust, and

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by not referring that touch so explicitly to intercourse, as Sanch. probably teaches in book 9, question 44.

2. One commits a sin venially by lustfully pleasing oneself, without the danger of pollution from conjugal intercourse, while the spouse is absent, or the act cannot be performed. Fill., Laym., Tann., Malder., with Diana, page 3, treatise 4, rule 224, against Navar., Azor, etc.

3. One commits a grave sin:

* A woman who lustfully pleases herself with thoughts of a previous union; because it is illicit for her by reason of her state.

* A man who, in the conjugal act, with a second wife, represents to himself the former, and delights in her carnally; because it is a mixture with another. Laym., book 1, treatise 9, chapter 6, see above, book 4, treatise 4, chapter 2, and book 2, chapter 1, paragraph 2, article 2.

(And we said the same in book 2, number 24, concerning betrothed persons, to whom it is illicit to delight in the future, even from a rational desire, although not carnal.)

933. — *Question:* Are shameful touches and glances between spouses mortal sins, solely for the sake of pleasure, without order to intercourse, if there is no danger of pollution?

Some, such as St. Antonin, Sylv., Margar., etc., affirm this, as cited by Sanch., book 9, question 44, number 11, because (as they say) every venereal act, not related to conjugal intercourse, is mortal. However, the common opinion and the truer one hold otherwise, and Laym., book 3, section 4, number 12; Pal., page 4, section 2; Less., book 4, chapter 3, number 125; Bonac., question 4, page 8, number 12; Sporer, number 502; Sanch., dictionary, question 44, number 12, with Abul., Vict., Ang., Arm., Sa, Med., Led., etc.; Salm., de matr., chapter 15, page 6, number 84, with Henr. Aversa, Perez, and Diana, Boss., chapter 7, number 157, with Vasq., Fagn., Vill., and Hurt., and Croix, number 341, with Soto, Tol., Cajet., Con., Fill., and many others. The reason is that the conjugal state, just as it promotes intercourse, also promotes such touches and glances; otherwise, since there is so much society between spouses, and they often cannot have intercourse, they would be exposed to great dangers if such acts were gravely illicit for them. Just as the pleasure sought in intercourse does not exceed a venial sin, so also these touches and glances. And this is true even if intercourse were forbidden to them at that time due to illness, or was impossible due to impotence that had supervened, as Sanch., number 20 and 22, Croix, number 339, and Boss., 499, with Con., Fag., Aversa, Fill., Vill., etc., say. Because, since intercourse is licit between spouses, touches between them cannot be gravely illicit. Otherwise, it should be said differently, if a spouse were bound by a vow of chastity, because such a vow excludes all venereal pleasure voluntarily received; thus, commonly, Sanch., dictionary, question 44, number 26, and Boss., chapter 7, number 204, with Vasq., Fill., Con.,

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and others. But whether this also applies if...

[*Latin ed. p. 119*]

Is a married couple impeded from conjugal acts due to an affinity or spiritual relationship contracted? Aversa, in *Responsionibus*, n. 200, affirms this, because to those for whom conjugal acts are forbidden, even those acts which are preparations for such acts are also forbidden. However, Bossius argues against this in the same place, along with Fagius, Fillon, and Perez, because the law prohibiting conjugal acts, whether it be penal or prohibitive, is not extended to acts which are merely preparations. Furthermore, a couple under such an impediment should ordinarily abstain from such acts, especially those that are shameful, due to the imminent danger of pollution or the solicitation of conjugal acts, which would be contrary to the prohibition. 934. — Question II. What if spouses foresee that shameful acts will result in pollution, either in themselves or in the other? Several opinions exist. The first opinion, held by Sanchin, book 9, title 45, n. 34; Fillon, *Tractatus*, book 3, chapter 9, n. 356; Viva, *Quaestiones*, 7, article 4, n. 4; Escobar, book 26, n. 207; Elbel, n. 393, along with Herince and Sporer, n. 500, along with Perez, and Gobius, holds that such acts are excused from all guilt, even in the one initiating them, if pollution is not intended, nor is there a danger of it occurring, and if the act is not so shameful that it would be judged as the beginning of pollution (as would be the case with a slow and deliberate movement of the finger within the woman's vagina); and furthermore, if there is a serious reason for such an act, namely, to prepare themselves for conjugal acts, or to foster mutual love. The reason is that in such a case, the just cause excuses these acts, which would otherwise be illicit between spouses; and if pollution occurs, it would be accidental. It is said that a serious reason must be present, because if it is not present, the aforementioned acts are not excused from mortal sin. The second opinion, held by Paleari, page 4, § 2, n. 2; Bossius, chapter 7, n. 213; and Salm, *De Matrimonio*, chapter 45, page 6, n. 86, along with Soto, Cajetan, Decius, Hurtado, and Aversa, distinguishes and says that shameful acts are mortal sins if pollution is foreseen to result from them; because, since these acts are closely related to pollution, and are not of themselves intended to foster conjugal affection, they are considered to be voluntary in their cause; otherwise, if they are chaste, such as kisses and embraces, because these acts are in themselves licit between spouses, since they are naturally suited to fostering conjugal love. The third opinion, held by Diana, page 6, treatise 7, rule 65, along with Praepositus and Villalobos, says that both shameful and chaste acts are mortal sins if the danger of pollution is foreseen. The reason is that acts are licit between spouses only to the extent that they are sought within the bounds of marriage, to the extent that nothing follows that is contrary to the end and institution of procreation; but when the dispersion of the seed is foreseen, even if it is

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not intended, all acts are illicit. With these opinions presented, I believe it is more probable to say that shameful acts between spouses, with the danger of pollution, are mortal sins, both in the one initiating them and in the other; unless they are done to excite the spouses to conjugal acts that will immediately follow, because since they have the right to conjugal acts, they also have the right to such acts, even though pollution may occur accidentally before the conjugal act.

[*Latin ed. p. 120*]

It should come to pass. Moreover, I also consider chaste touches to be mortal sins, if they are committed with the danger of pollution, either to oneself or to another, in cases where they are done solely for pleasure, or even for a slight reason; otherwise, if they are done for a serious reason, such as when there is a pressing need to show signs of affection to foster great love, or to prevent a spouse from suspecting that the other is inclined towards another person. It is probable that Sanchez, in book 35, number 34, Bossuet, in book 203, and Escobar, in number 207, state that even indecent touches are licit, unless they appear to be the beginning of pollution, even if there is a danger of pollution to either party, because in such a case, the one who gives the touch is attending to the thing for which he is obligated by the right of the one requesting it, who, although he may sin, does not lose his right, as long as he acts with guilt on the part of the person, according to numbers 944 and 935.

However, is it always a mortal sin if a man puts his genitals into his wife's mouth? Sanchez, in book 9, number 47, number 5, and Bossuet, in chapter 7, numbers 175 and 193, along with Filliu and Perez, deny this, provided that there is no danger of pollution. But Sporer, in *De Matrimonio*, number 498, and Tamini, in book 7, chapter 3, section 5, number 35, and Diana, page 6, treatise 7, rule 7, along with Fagundes, argue that it is always a mortal sin, because in this act there is a close danger of pollution due to the heat of the mouth, and because this act itself seems to be a new species of luxury contrary to nature (which some call "irrumatio"); for it always seeks another vessel from the man, besides the natural vessel intended for copulation, and this seems to be a new species of luxury. However, Sporer, in the aforementioned passage, along with Filliu and Marchi, make an exception if it is done incidentally; and indeed, Sanchez seems to think the same, when he excuses the act from being mortal, if all danger of pollution ceases. Paladu, in page 4, section 2, number 6, also makes an exception if a man does this to arouse himself for natural copulation; but I do not think either of these exceptions should be admitted, based on the aforementioned.

Furthermore, Sanchez, in the aforementioned passage, number 32, at the end, condemns as mortal a man who, during the act of copulation, puts his finger into his wife's improper organ, because, as he says, there is in this act an inclination towards sodomy. However, I believe that such an incli-

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nation can indeed be found in the act, but in itself, I do not recognize this inclination as being inherent in such an act. Moreover, I say that spouses who engage in such a vile act should always be severely reprehended.

936. Question III. Are indecent touches, which a spouse has with himself, when the other is absent and the danger of pollution is absent, mortal sins? The first opinion denies this, and is held by Paladu, in page 4, section 2, number 5, Escobar, in number 204, Bossuet, in chapter 7, numbers 205 and 207, along with Perez, Hurtado, Ochagavia, in Sanchez, in book 9, number 44, number 15, along with Palud and Lopez, and for this opinion, Salm, in *De Matrimonio*, chapter 15, page 6, number 87, also cites St. Thomas, in *Quaestiones Disputatae*, question 6, on marriage, doubt 26, number 488. The reason is that such touches are made honorable by the very state of marriage, since they are ordered by their nature towards copulation; and therefore, if the danger of pollution is absent, they cannot be gravely illicit in a spouse, even if he is presently unable to consummate the copulation.

[*Latin ed. p. 121*]

The second opinion, which is more probable and should be followed in practice, affirms that, and this is held by Laym. tr. 3. e. 6. n. 12. *in fine*, Diana p. 3. t. 4. r. 215. (although this author is very lenient), Spor. n. 503. with Arm. and Vasq. and Salm. l. e. with Avers. Sanctio, Salas, Montesin. Dic. and Ant. à Sp. S. Ratio, namely, because the spouse does not have a right in and of themselves to their own body, but only accidentally, that is, only insofar as they can prepare themselves for the act of union; therefore, when the act of union is not possible, any touch with oneself is entirely illicit; and also, because the touching of the genitals, when it occurs with displeasure and with agitation of the spirit, tends of itself towards pollution, and is closely connected with that danger. 937. — Question IV. Whether the sensual pleasure in the spouse, concerning the act of union, is mortal, even if that pleasure cannot be had at present? Answer: Three opinions are given. The first opinion affirms, and this is held by Pont. l. 10. c. 16. n. 44. Wigandt tr. 4. n. 59. Sylv. and Vega, Rodr. and Dic. apud Salm. ibid. n. 88. who call it probable. Reason: because such a pleasure is like a simulated pollution, which, since it cannot be had at that time in a proper manner, is entirely illicit. The second opinion, which is more common, denies it, and this is held by Bon. p. 4. quæst. 8. n. 12. Escob. n. 204. Spor. n. 505. Croia n. 337. with Suar. and Gers. Boss. c. 1. n. 215. with Fill. and Perez and Sanch. l. 9. d. 44. n. 3. with S. Anton. Palud. Arm. Cajet. Met. Viguer. Tab. and commonly, as asserted, and as also confessed by Pontius, also Con. Avers. Gabr. and Dian. apud Salm. ibid. n. 89. who also consider it probable. This opinion says that such a pleasure is not mortal, if there is no danger of pollution, but only venial. It is venial, because it lacks the proper end, since it cannot be ordered towards the present act of union. However, it is not mortal, because pleasure derives its goodness or badness from the

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object; and since the act of union is licit for spouses, the pleasure cannot be gravely illicit for them. And this is expressly favored by what is said by D. Th. de Malo quæst. 15. a. 2. ad 17. where: "Just as carnal commingling is not a mortal sin for a spouse, neither can consent to pleasure be a graver sin than consent to the act." And this is admitted by Spor., even if the venereal pleasure arises from the agitation of the spirit. Finally, the third opinion, which is held by Salm. de matr. c. 15. p. 6. n. 90. distinguishes, and says that if the pleasure is without agitation of the spirit, it will not be mortal; otherwise, if it is with agitation and titillation of the parts. I will now offer my judgment. If the pleasure is had not only with agitation of the spirit, but also with titillation or venereal pleasure, I believe, with Conc. p. 408. n. 10. (contrary to Sporer as mentioned above).

[*Latin ed. p. 122*]

It cannot be excused by a mortal man, because such pleasure is closely connected with the danger of pollution. However, I believe it should be said differently if that pleasurable stimulation is absent, because then the danger of pollution is not closely connected with the pleasure, even if there is a disturbance of the spirits; and thus, indeed, Sanchez writes in chapter 4, that he does not excuse pleasure when it is accompanied by sensual delight, but only when it is accompanied by disturbance and alteration of the parts without the danger of pollution. But because such disturbance is closely related to that pleasurable stimulation, therefore, husbands and wives should be strongly encouraged to abstain from such a tedious pleasure. It should also be noted that it is entirely illicit for a spouse who is bound by a vow of chastity, as commonly stated by Sanchez, book 4, chapter 26, and by Bossuet, chapter 7, paragraph 204, with Vasquez, Fulgentius, and others.

ARTICLE II. Whether the marital act is a precept and a duty.

638 Spouses are by their very nature obligated to perform it, and sometimes even to seek it.

938 They are also obligated to cohabit, unless there is a just cause for excuse.

Doubt 1. Can a husband expel his wife for non-payment of the dowry?

Doubt 2. Is he obligated to support her if the dowry is not paid?

Doubt 3. If she commits adultery?

940 Concerning the obligation to pay the debt.

Question 1. Is it a mortal sin to refuse the debt once, or twice? What if one asks for it to be remitted, or if one yields to prayers? What if one asks for it immoderately? What if one delays paying it for a short time?

941 Question 11. Can the multiplicity of children be a just cause for refusing the debt?

942 A spouse sins by declaring oneself impotent.

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943 Question 1. Is a spouse obligated to give to the other who illicitly demands it?

944 Doubt 1. What if the fault lies with the one demanding it, namely, if that person has a vow of chastity, etc.?

945 Doubt 2. What if the one demanding it is incestuous?

946 Question 11. Is a spouse obligated to give to the one demanding it with only a venial fault?

947 Question 111. Is it permissible to give or demand, if the man is willing to sow outside the womb after intercourse has begun?

948 Is a spouse obligated and able to give, if they mutually cover chastity? What if one is amorous, or drunk?

949 An incestuous person, and one who covers chastity, cannot demand it, but is obligated to give it.

950 A spouse is not obligated to give if it causes a serious harm to oneself, or to the offspring. Is a spouse obligated to give to the other who is suffering from a contagious disease? What if the harm is leprosy, and the other is a leper? What if the harm is serious? Can one then give? From what causes can a spouse give with a serious danger to health?

951 Can a spouse give with a danger to the offspring?

952 Is a wife obligated to give when suffering from a fever, or during menstruation, or during pregnancy, or if the other demands it in an unnatural way?

953 What if the wife has experienced the danger of death in childbirth, or has given birth to dead children?

954 Is it ever permissible to prevent generation? When does a wife sin by rising, or urinating immediately after intercourse?

Doubt 1. Can a girl who has been pressed immediately expel the semen?

Doubt 2. Is it permissible for the elderly, or the infirm, who are often unable to sow within the womb, to have intercourse?

938. — ANSWER I. Although spouses are not obligated by law to use...

[*Latin ed. p. 123*]

In the case of marriage, however, spouses are bound by justice to render each other what is due, if either requests it, expressly or tacitly, provided that modesty is observed. The first reason is that they are not bound to exercise their own rights. The second reason follows from the nature of a reciprocal contract. St. Thomas, *Summa Theologica*, IV, 32, question 4, article 2, etc., commonly cites 1 Corinthians 7. Therefore: 1. Neither spouse is, by their very nature, obligated to demand what is due, although they may sometimes be obligated, either accidentally, or out of charity, for example, to avert an imminent danger of incontinence to their spouse. See Perez, Disp. 50, sect. 2, nos. 4 and 5. (See also notes 928 and 929.) Or, by

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legal justice, if the public good is imperiled, unless a child is born. 939. — 2. Spouses are bound to cohabitation, and neither can absent themselves from the other for an extended period without just cause; for this obligation follows from the obligation to render what is due. Sanchez, *Doctor Iuris*, Book 9, title 4, De Coniugiis, title 34, title 2, no. 19. Perez, Disp. 50, sect. 3. It is certain that spouses are bound by the obligation of justice to cohabit in the same house, at the same table, and in the same bed; see Sanchez, Book 9, title 4, no. 2, and Bossuet, *Concordia Juris Canonici*, Book 6, section 7, no. 2. From this, it follows that no spouse can leave the other for a long time against their will, unless just causes are present, namely, for the public good, or to support or protect the family, or to avoid damage from enemies, as Sanchez, no. 42, Layman, Book 4, no. 3, Palafox, page 5, section 4, and Bossuet, nos. 4 and 6, with Aversa, Villalobos, and others, state. Bossuet, no. 42, with Tolet and Sayro, adds that if a husband must remain elsewhere for a long time, he is obligated, if it is convenient, to bring his wife with him so that she may live with him. But is the wife obligated to follow the husband for the sake of cohabitation? See the statements in note 977. A husband may undertake a brief pilgrimage for devotional reasons, even against his wife's wishes; however, a wife cannot do so without her husband's consent, since she is subject to his will, and it is not fitting for a woman to travel; thus Sanchez, no. 45, Palafox, no. 3, and Bossuet, no. 8, with Layman, Villalobos, Fagius, and Perez, citing D. Thomas, *Quodlibet*, 4, article 14. However, by mutual consent, spouses can separate from each other, provided that there is no danger of incontinence, and no harm to the upbringing of the child. Sanchez, no. 5, and Bossuet, no. 48, with Fillon, Villalobos, Perez, Fagius, and others, cite the Apostle (1 Corinthians 7): "Defraud not one another, except, perhaps, by consent, for a time, that you may give yourselves to prayer: and return together again, lest Satan tempt you for your incontinency." Doubt 4: Is it permissible for a husband not to cohabit with his wife, and to expel her from the house because the dowry promised has not been paid? Panormita, Armilla, Taborda, and Gomez, cited by Bossuet, Book 6, no. 26, affirm this, because the husband is not obligated to support his wife if the dowry has not been paid; therefore, he is not obligated to cohabit with her, although he is obligated to render what is due. But this is more probably denied, and commonly...

[*Latin ed. p. 124*]

nius Sanch. book 9, title 5, paragraph 47. Pal. § 2, paragraph 5. Mol. de just. title 245, §. If to the husband, Boss. book 6, paragraph 28. with Reb. Henr. Reg. Vill. Fag. etc. The reason is that the obligation to cohabit does not arise from the payment of the dowry, but from the very natural and divine law, by which the husband is bound to provide for his wife, and therefore to live with her; therefore, the aforementioned authors say (contrary to Mol. and Reb.) that even if the husband has not yet brought his wife into his

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house, he is bound to do so, notwithstanding that the dowry has not been paid. But this raises the doubt: 2. Is the husband bound to support his wife if the dowry has not been paid? Generally, the Doctors deny this if the fault of the promisor is involved: thus Sanch. book 9, title 5, paragraph 2. Bon. page 7, paragraph 7. Boss. book 6, paragraph 29. and Salm. de IV. præc. book 1, chapter 1, page 3, § 4, paragraphs 50 and 53. with Fag. and Trull. and others throughout from the law Pro oneribus, chapter de jure dotium, where it is said that the dowry is established so that the husband may support his wife. However, except 4. if the husband took a wife without promising a dowry, Sanch. paragraph 8. with Host. Præp. and Sylv. and Salm. cited, paragraph 50. with Abb. Mol. Bon. etc. Except 2. if the wife is in the husband's service, then at least she is to be supported as a servant. Salm. ibid. with Abb. Lupo, etc. apud Sanch. paragraph 6. who, however, does not admit this with Surdo and others, because (as he says) the wife is bound to provide the dowry and obedience to the husband; therefore, she is not necessarily to be supported, but only to provide obedience. But I adhere more to the opposite opinion, because the very law of nature dictates that he who is employed to serve should be supported. Except 3. if the wife does not cohabit with the husband through her own fault; otherwise, if for a just cause. Salm. ibid. paragraph 54. with the same. Furthermore, when either the husband or the wife is truly poor, for example, if the dowry is fortuitously lost, the other is bound to support the other. Sanch. paragraph 10. Bon. paragraph 8. Salm. ibid. paragraph 53. with Mol. Trull. etc. from the law Si cum dotem, § Si maritus, ff. soluto matr. ibi: For what is more human than for a wife to share with her husband in the misfortunes, or for a husband to share with his wife in her misfortunes? But it should be noted 4. that because the dowry is not paid, the husband cannot deny the debt to his wife. Sanch. book cited, paragraph 4. and Salm. book cited, paragraph 52. at the end. with Mol. Sylv. etc. It should be noted 2. that in extreme necessity, parents should be assisted first, who are to be loved because of the principle of natural law, than a spouse, as D. Th. 2, question 26, article 14. and Salm. ibid. paragraph 54. against Laym. Bon. Pal. etc. apud Boss. book 22, paragraph 1235. And also children, since they are the parents. Salm. ibid. paragraph 54. in the middle. with others. But in a very grave necessity, the spouse should be assisted first, than parents and children, because there is a greater bond between spouses in domestic administration, since they are one flesh. Sanch. book 9, title 29, paragraph 4. Bon. page 7, paragraph 49. and Salm. de IV. Præc. book 1, chapter 1, page 3, § 4, paragraph 54. at the end. with Tolet. Bann. Trull. and others. It is doubted 3. whether the husband is bound to provide sustenance to an adulterous wife? Some affirm, as Clarus and Ant. Gabr. apud Salm. ibid. paragraph 54., because an adulterous wife does not cease to be a wife. Others, as Sylvest. vers. Dos. question 14, distinction 9. and Ang. and Surdus apud Salm. ibid. deny, if

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the adultery is pu-

[*Latin ed. p. 125*]

It is debated whether a husband can expel his wife from the home if she commits adultery. Some argue that he can only do so if the adultery is public, but not if it is concealed, as in the latter case, he cannot expel her. Others, as stated by Sanchez in book 4, title 8, paragraph 25, and by Salmeron in the same place, paragraph 55, along with Soto, Manes, Fagius, and the Council of Trent, maintain that it is not permissible to expel the wife, whether the adultery is public or concealed. The reason given is that, even if we grant that the wife cannot be expelled for concealed adultery to prevent the exposure of her crime and to avoid scandal (although this point is debatable; see paragraph 968), this reason does not apply to the denial of support, which can be refused without causing scandal or shame to the wife. Salmeron, in the aforementioned paragraph 55, concludes, along with Cardinal de Laurea, Surdo, and others, that it is permissible to deny support even if the wife has only exchanged kisses with another person, if those kisses are notorious; or if the kisses are concealed, if they are excessively lascivious; or if the wife is of noble birth.

3. A husband sins mortally if he seriously and persistently denies his wife what is due to her, because it is a grave matter and is owed by right. However, this is understood to be the case unless the wife can be dissuaded by prayer or other honorable means, and the request is not immoderate. For, if a wife repeatedly asks and is denied only once or twice, without the risk of incontinence, it is considered to be only venial, due to the lightness of the matter. Sometimes, if the request is made excessively and the wife legitimately asks frequently, it may be considered to be a sin of no consequence, according to Perez in book 50, section 4. There is also no just cause for denial, according to Bonaventure in question 4, paragraph 1, citing Sanchez and others, unless there is a danger of incontinence for either party. Perez, in the aforementioned book, paragraph 6, considers it to be a just reason for denial if more children are born than the couple can support.

Question 1: Does a husband sin gravely if he denies his wife what is due to her once or twice? The first opinion holds that he does not sin, provided there is no danger of incontinence, and this view is held by Pope Innocent in book 10, chapter 2, paragraph 5, along with Sanchez in book 9, title 2, paragraph 44, and Bonaventure in question 1, paragraph 1, as well as Aversa, Hurtado, Cornaro, and Ochagavia, as cited by Bossuet in chapter 1, paragraph 40, because this does not seem to be a matter of such gravity as to constitute a mortal sin. The second opinion, held by Paleario in book 4, section 4, paragraph 5, Tamburrini in book 7, chapter 3, section 3, paragraph 20, Bossuet in chapter 1, paragraph 44, along with Tanquerey and Croia in number 394, and Gobinus in book 1, states that even denying once,

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or delaying what is due to a wife who seriously and persistently requests it, is, in itself, a mortal sin, even if there is no danger of incontinence. The reason given is that this seems to be a matter of sufficient gravity, both because of the potential for offspring to be conceived from a single act of union, and because of the discord and the risk of incontinence that can result from such a denial. However, despite these considerations, the first opinion does not seem improbable, since the gravity of the matter depends on the estimation of people, and many grave doctors consider this to be a light matter. They themselves say this, assuming that there is no danger of incontinence or great discord; moreover, the procreation of offspring for that particular occasion is very uncertain. It is generally agreed that a wife does not sin by refusing to provide support if the husband requests it in a benevolent or remiss manner, as stated by Pope Innocent in the aforementioned book, paragraphs 4 and 5, Bonaventure in question 1, paragraph 1, Croia in number 394, and Roncaglia.

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p. 183. q. 2. r. 1. Tamb. n. 21. With Corn. and Ochag. Laym. c. 4. n. 1. and Poss. c. 4. n. 35. With Sot. Reb. Rodr. Henr. Reg. Lop. Fag. Hurt. Vill. Avers. and Dian. Furthermore, if the spouse who is requesting yields to the prayers of the one who is refusing, even persistently, when the latter has a just reason for refusing, the one refusing does not even commit a venial sin; thus, Sanch. d. d. 2. n. 43. with Nav. Sylv. Margar. Philiarch. etc., unless the prayers are so insistent that the other party seems to be forced to yield; or unless there is an imminent danger of incontinence present in the other party; in such a case, even with prayers, it would not be permissible to dissuade him without a grave reason; thus, Sanch. l. c. with Nav. Sylv. Lop. D. Th. in 4. d. 32. q. 1. art. 2. ad 4. Moreover, the one refusing does not sin when the other party requests immoderately, without, however, a danger of incontinence, and in this matter, all agree; see Boss. n. 18. Hence, they say Laym. c. 4. n. 4. Croix n. 396. Holz. n. 468. Spor. n. 543. with Rodr. and Gloss. that it is not mortal to refuse a fourth act after three acts have been performed on the same night. Moreover, they add Tamb. n. 22. Spor. l. c. and Sanch. n. 41. with Led. that it is not mortal to refuse five times in a month once. But I do not agree with this, because, on the one hand, to request five times in a month is very moderate, and, on the other hand, to refuse once in a month seems to involve a rather serious matter. The same does not seem to sin if the wife delays fulfilling her duty for a short time, namely, until night; as Pont. c. 2. n. 5. Sanch. d. num. 41. with Vict. Ronc. l. c. Spor. n. 513. with communit, and Croix n. 394. with Perez, Gob. and Dian. Or if she delays from night until morning; as Boss. n. 37. with Sanch. Pon. Vict. Hurt. Vill. Led. etc., always excluding the danger of incontinence. It is known that one can refuse after an act has been performed during the day, but not at night. 941. — Question II. Whether it is a just reason

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for refusing the marital duty if more children are born than the spouses can support? The first opinion denies this, and this is held by Laym. tr. 46. c. 4. n. 46. Ronc. p. 183. q. 2. r. 4. Spor. n. 546. (who makes an exception only for the case in which the spouses are reduced to extreme necessity by the increase in their offspring), as well as Pal. p. 4. §. 10. n. 8. with Sylv. Con. Nav. Ang. Reb. Margar. Lop. and Graff. The reason is, first, because the procreation of offspring pertains to the principal end of marriage, to which any inconvenience must be subordinated; for it is better that the offspring live in poverty than that they not exist at all; second, because either the spouse would refuse for a long time, or sometimes: if for a long time, he would expose the other to the danger of incontinence; if sometimes, he would refuse in vain; for spouses more easily conceive when they are together. The second opinion, however, affirms this, and this is held by Sanch. l. 9. d. Xv. n. 3. Pont. l. 10. cap. 3. n. 7. Dian. p. 9. tr. 7. r. 3. Bonac. p. 4. n. 43. with Led. Rodr. and Sa, and Boss. c. 4. n. 220. with Sot. Comit. Vill. Reg. Hurt. and Fag., and they consider it probable Tamb. l. 7. c. 3. §. 5. n. 3. and Spor. l. c. The reason is, first, because the future multitude of offspring...

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It is detrimental to the children already born, and secondly, because in all debts, there is a great difficulty in obtaining payment. However, all agree that there is an obligation to render what is due, if there is an imminent danger of incontinence to the other party; and indeed, as the Canonist rightly observes, this danger will certainly be present if the spouse lives in the same dwelling, and the other party demands the debt; and therefore, the first opinion is more pleasing to me.

4. A man, or a woman, sins gravely if he or she renders oneself impotent, even by means that are otherwise licit, such as fasts, etc.; indeed, if one cannot otherwise fulfill the debt, one does not licitly observe the fasts of the Church. (See the aforementioned in book 4, chapter 1034, section 3. They are excused, as we said, because this applies to a man; for it seems difficult to render a woman impotent through fasts, as stated by Salm. in book 4, preface, chapter 1, paragraph 4, number 49.) As also, a wife, if she becomes noticeably deformed. Bon. in the aforementioned. Sanch. in book 9, chapter 3, number 44. Reg. Con. Fill. number 306, etc. Perez in book 50, section 2.

5. A spouse is obligated to render what is due, even to one who demands it illicitly, if the rendering is not itself illicit at that time and place, for example, if demanded for the sake of pleasure, or if under a vow of chastity, or on a feast day, etc. See Sanch. in book 9, chapter 6. Pont. in book 9, chapter 3. Con. in book 34, chapter 6. Perez in book 50, section 5. Because the malice of the other party does not give him the right to deny what is his. However, he is not obligated to render to one who demands it without a grave reason, or in an unnatural manner, or in a public or sacred place,

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etc. It is certain that a spouse is not obligated to render what is due when committing his own sin, even a venial sin, since no one can be obligated to sin; thus, commonly, Pal. in book 4, section 14, number 4. Bon. in book 3, number 3 and 4. Laym. in chapter 4, number 47. Spor. in number 517. Boss. in chapter 4, number 226, and others throughout.

But I ask: Whether it is licit to render to one who demands it illicitly, with mortal sin? Answer: If the one acting is held accountable for the fault, for example, if the other demands it in a sacred or public place, or if with the danger of abortion, or to one's own health, or to the health of another, all agree that the spouse is not obligated, nor can he render without grave fault; for then, the act itself is evil, and the other unjustly demands it, because he has no right to demand it; thus, Sanch. in book 9, chapter 6, number 8. Pont. in book 10, chapter 3, number 3. Salm. in de matr., chapter 45, paragraph 2, number 21, with D. Th. Con. Bon. Henr., and others throughout.

But:

4. If the fault lies with the person demanding, namely, if he is bound by a vow of chastity, or demands it for a wicked purpose, can the other render? The common opinion says that not only can he, but he is also obligated; and this is followed by Suzr. de censur., in book 45, section 4, number 9. Lugo de sacram., in book 8, number 482. Contin. Tournel. tr. de matrim., chapter 7, number 4, see Dico 4. Conc. in page 369, number 2. Laym. in book 5, translation 10, page 3, chapter 4, number 47. Bonac. in question 4, page 3, number 3. Pal. in book 4, section 14, number 3. Spor. in number 547. Holzm. in number 467, see Tertio. Elbel. in number 416. Escob. in book 25, number 91, with Sylo. Con. Cov. and Henr. Sanch. in book 6, number 7, with Ang. Led. Manuel, P.

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Soto, *Veracr. et Met. Boss.*, c. 1, n. 241, together with Perez, *Diana, Fill. et Vill.*, and Salm. *de matr.*, c. 15, p. 2, n. 48, together with Avers. *Reb. Dic.*, etc. The reason is that the spouse, by the vow, has not lost the right to demand, and therefore, although the demand may be illicit, it is not unjust.

The second opinion, held by Pont. l. 40, c. 3, n. 3, and Croia l. 6, p. 3, n. 353, together with Sylv. *Comit.*, and others, states that, whether the fault lies in the actions themselves or in the person making the demand, it is not permissible for him to fulfill the demand (unless he is in a position to free himself from that wrongful circumstance, for example, if he were demanding it for a bad purpose). The reason is that, once the impediment of the vow is in place, the conjugal act is necessarily illicit for the one making the demand, and it is not permissible for the other to cooperate in this. Furthermore, the one making the demand does not have dominion over the other's body in that case, either because dominion is then impeded by the vow, or because the spouse only has the right to the licit use of marriage.

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This is consistent with the statements in *de rest.*, l. 4, n. 697, where Lugo, *de just.*, d. 21, n. 62, and Croia, together with Less. *Mol.*, Soto, Nav., etc., state that the debtor is not obligated to return to the owner something that the owner will abuse for the purpose of sinning; and this is expressly stated by D. Th. 2.2, q. 26, art. 5, ad 1: "When the thing to be returned appears to be gravely harmful to the one to whom the restitution is to be made, it should not be returned to him at that time, because restitution is ordered for the benefit of the one to whom it is made."

Lugo, in the aforementioned passage, states that, since this obligation is only one of charity, the debtor is not obligated to refuse, if he cannot refuse without serious inconvenience. This opinion is indeed probable, but the first opinion seems more probable, at least externally; it certainly rests on a strong reason, because the one bound by the vow retains the right to demand, and therefore, the other is obligated to return it, just as if someone were to make a vow not to demand money owed from you, and if that person later demands it, you are obligated to return it, because by the vow, the creditor has not lost his right, and in that case, by returning it, you are minimally formally cooperating in his sin, since you are not the cause of his demanding the debt, but only contributing to the material aspect of the sin, which you cannot prevent, since you are obligated to return the thing to its owner; therefore, you are not obligated to prevent it, because by preventing it, you would commit an act of injustice.

It cannot be said that no one has the right to an illicit act; for it would be replied that while the spouse making the demand may not have the right to demand with sin, he does have the right to the conjugal act, which in itself is honest, and therefore, the other does not sin by returning it, because he is providing for, not another's sin, but a licit act, and this is owed by justice.

Therefore, Sanch. lib. 9, d. 36, n. 44, together with Palud. Henr. Man. and Led., and Salm. *de matr.*, c. 15, p. 2, n. 20, together with Con. and Bon., state that, even if one spouse vows something with the consent of the other, if he has not expressly relinquished his right to demand, the other is still obligated to return the debt. Indeed, even if they have vowed to each other, without intending to relinquish their right, the other is still obligated to return it to the one making the demand, as stated by the same Salm., in the aforementioned passage, together with Sanch., Less., Bon., and Henriquez.

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It is, however, noted by Sanchez in book 9, title 6, paragraph 5, along with Covarrubias and Adrian, and Bossuet in book 4, paragraph 248, along with Con, Reb, and Vill, that in such a case, the spouse is obligated to warn the one who is bound by a vow, so that he may desist from the request, so that the spouse may warn without fear of great discord, or indignation, or incontinence on the part of the other; these inconveniences, as Sanchez and Bossuet say, are very common. However, when a spouse foresees that

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the other is seeking something illicitly, either because of a vow or another impediment, it is safer for him to intervene and, if the other has already requested it, for him to request it as well, saying, "I want you to give it to me"; but, according to Sanchez in the same paragraph, wives are rarely obligated to do this, because it would be a great burden for them, given the natural modesty of women, to be required to always request. Furthermore, it should be noted, as Bossuet states in paragraphs 252 and 273, that if a spouse who is bound by a vow requests something within the first two months of marriage, he is not obligated, nor can the other give it to him; at that time, he has no right to request it.

945. — Doubt 2. Can a spouse be obligated to give something to one who is making an incestuous request? There are three opinions. Some, such as Hostiensis and Lopez, as cited by Bossuet in book 4, paragraph 249, say that one is obligated. Others, such as Pontius in book 40, chapter 3, paragraph 3, and Palancius and P. Ledo, as cited by Sanchez in book 9, title 6, paragraph 44, say that one is neither obligated nor able to do so, because, since the incestuous person is deprived of the right to request, the other would be illicitly cooperating in his sin by giving. Others, however, more commonly and with greater reason, say that one is not obligated, but can give; thus Sanchez in paragraph 42, Palancius in page 4, section 6, paragraph 7, Bonaventure in question 4, page 3, paragraph 3, Salmeron in *De Matrimonio*, chapter 45, page 2, paragraph 45, Bossuet in book 4, paragraph 250, along with St. Antoninus, Paludanus, Sylvaticus, Layman, Covarrubias, Victor, Regius, and Villalobos, etc. The reason is that, although the incestuous person is deprived of his right, the innocent spouse, having the right to request, *a fortiori* has the right to give; otherwise, he would have to bear a great burden (especially the wife), if he were always obligated to request; indeed, he would have to be greatly troubled, fearing that he might be led to give by the tacit request of the other; but this burden sufficiently excuses him from cooperating in the material sin committed by the incestuous person. It is, however, safer (as we have said), for the innocent spouse to request it himself.

946. — Question II. Is one obligated to give to one who is requesting something with only a venial fault? Some affirm, as Bossuet states in book 4, paragraph 230, Escobari in book 25, paragraph 93, Sporer in paragraph 548, Sanchez in book 9, title 6, paragraph 6, and title 46, paragraph 8, along with Cajetan and P. Soto, Layman in book 4, paragraph 48, along with Dom. Soto and Navarrus, and Bossuet in book 4, paragraph 230, along with Con, etc. The reason is that the bond of justice by which spouses are obligated to give is stronger than the bond of charity by which they are obligated to avoid the sin of the other; furthermore, they say that there is always a just cause for giving, namely, lest the one who is requesting be displeased, or at least (as Sanchez says), lest he be deprived of his right to receive. Others, however, as Bonaventure states in question 4, page 3, paragraph 40, along

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with Armilla, say that one is not obligated unless there is a just cause on the part of the one who is requesting. I say that a distinction must be made: if the act is illicit on the part of the person who is requesting, for example, if he is requesting it for pleasure, or for some other...

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If the act is only mildly sinful, or if it is on the day that the person wishes to receive the Eucharist, then he is obligated to consent; because, since the act itself is honest, he is obligated by justice to consent, even if the one requesting commits a serious sin in making the request, as we said in n. 944. Question 4. However, if the act is venially illicit due to the act itself or the manner of its execution, such as if the request is made in an unnatural position, or during menstruation, or during the puerperium, then, when a just cause is present, he may indeed consent, since any just cause excuses from a venial sin. A just cause would be, for example, to avoid incurring the indignation of another, or a resentment that is somehow noticeable, and which he cannot easily remove. The reason given by Sanchez, namely, that the spouse should not be deprived of his right to receive, does not seem sufficient, because just as the one requesting does not have the right to request in that way, so neither does the other have the right to consent in that way. I said that he may consent, but he is not obligated, because although the bond of justice is stronger than the bond of charity, nevertheless, when the act is in this way inherently illicit, the other person does not have a right to it, and thus the reasoning of the first opinion would be upheld; thus Bus., as above, n. 934, and Less., l. 3, c. 3, n. 89; also Paluc. and Led., apud Sanch., d. d. 16, n. 8, and Croica seems to consider it probable, n. 355, with St. Antoninus, 3, p., tit. 4, c. 2, §. 7, where he says that the spouse is obligated to consent when the other requests in a natural manner; therefore, if it is in an unnatural manner, he is not obligated. Certainly, he would be obligated to consent if the one requesting had a just cause from his own side to request in that way, for example, if he were to request the act in an unnatural position because his wife is pregnant, or because he himself is obese, or otherwise because there is a danger of scandal; see the statements in n. 947. Also, if the request is made during menstruation, or during the puerperium with a danger of incontinence, according to the statements in n. 925, near the end. But is the spouse obligated to consent to the request immediately after dinner? See the statements in n. 940, v. It seems. Is he obligated to consent on the day of Communion? See n. 922, and in Tract. de Euch., l. 6, n. 274. Is he obligated to consent on a festive day, during a fast, or during Rogations? See n. 923, 947. — Question 3. Is it permissible for the wife to fulfill the debt, or to request from the husband who is willing to sow outside the marital act after the act has begun? The first opinion affirms, and this is held by Pont., l. 40, cap. 44, num. 8, Famb., Dec., l. 7, c. 4, §. 5, num. 4, and Sporer, p. 356, num. 490, because (as they say) when

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the woman consents or requests, she is contributing to a licit act, and she should not, because of the man's wickedness, be deprived of her own right. The second opinion, which is held by Roneag., p. 487, quæst. 10, r. 2, and Elbel, p. 474, num. 394, says that the wife cannot either consent or request, unless there is a grave reason, which excuses her from permitting the man's sin, and from cooperating in the material act of that sin; otherwise, she is obligated by charity, since she can, without serious inconvenience to the man, prevent the sin. However, I believe that a distinction should be made: If we are speaking of fulfilling the debt, I say that the wife can probably consent and is obligated to deny the debt, if she can do so without serious inconvenience, according to the elevated second opinion, n. 994, because the one who would abuse the thing due to him does not have a right to it.

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The obligation to fulfill marital duties must be vindicated; however, it appears more probable that the wife not only can, as the first opinion states, fulfill her duty, as also affirmed by Sanchez, book 9, title 3, section 46, number 3, but also *must* fulfill it. The reason is that, according to the aforementioned statements (number 944), when a fault arises from the person who has the right to the act, and that person himself has the right to the union, the other party cannot unjustly refuse to fulfill the duty, unless they can dissuade that person from such a fault; and then it is clear that the one fulfilling the duty does not materially cooperate with the sin of the other, since they are not cooperating in the sowing outside the vessel, but only in the union itself, which is entirely licit for both parties. However, if we are speaking of the *demand* for the duty, I say, with the second opinion, that the wife cannot demand it if there is not a just and serious reason; for then she is truly obligated by charity to prevent the sin of her husband. She will have a just reason to demand it if she herself is in danger of incontinence, or if she should be deprived of her right to the union more than once or twice, while constantly worrying whether the inconvenience is sufficiently grave, or not. See the statements on this matter in book 3, number 53, paragraph 5.

(1). 948 — 6. She is not obligated to fulfill the duty:

1. If one party has defrauded the other, for example, if they have mutually vowed chastity; (But the opposite is probable, if they did not intend to relinquish their marital right, according to the statements mentioned above, number 944, near the end.) or if they have publicly celebrated a divorce.

2. If the one demanding the duty is insane; for such a person is not capable of exercising marital rights; nor do they demand it with reason and in a human manner. This also applies to someone who is drunk. However, simply to demand, or to fulfill the duty, is permissible for both the drunk and the insane; unless there is a danger of killing the fetus. Navar, chapter 46. Sylvester, Laym, chapter 1, number 9.

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3. If the other party has committed adultery, because to the one who breaks faith, faith is broken in return; unless that person is also an adulterer, or the cause of the adultery. (See the statements mentioned above, number 966.)

Question: Is a spouse obligated to fulfill the duty demanded by an insane person, or a drunk person? Answer: Yes.

(1) To the question: Is it permissible for a wife to fulfill the duty, or to be demanded by her husband who intends to sow outside the vessel after the union has begun? The Sacred Penitentiary has answered this question several times, and among other things: In February 1823: "In the case in question, the woman, on her part, does nothing contrary to nature, and is engaged in a licit act; but the entire disorder proceeds from the malice of the man, who, instead of consummating the act, withdraws and spills his seed outside the vessel; therefore, if the woman, after due admonitions, does not succeed, and the man persists, threatening with beatings, or death, or other very serious evils, she may (as approved theologians teach) take action without incurring the danger of permissiveness; since, in the circumstances, she simply permits the sin of her husband, and does so for a serious reason that excuses her; because charity, which is obligated to prevent it, is not bound by such a great inconvenience."

From another decision of the same Tribunal, November 18, 1810: "Approved and esteemed moral theologians agree that it is permissible for the wife to fulfill the duty, and that, from this fulfillment, she may be harmed by her husband, and may reasonably fear a serious inconvenience; for they say that, in this case, the wife is not considered to formally cooperate with the sin of her husband, but rather she permits it for a just and reasonable cause."

The orator should advise such a wife to prudently admonish her husband to desist from this wickedness.

[*Latin ed. p. 132*]

Firm. Nav. c. 16, n. 26, and Sylv. Ang. Graff. Led. etc., apud Boss. c. 1, n. 293, because a drunken spouse, or one who has become insane, still retains the dominion acquired over the body of the other; nor does insanity excuse one from the duty of providing for the children. However, it is commonly and more plausibly argued with Bus., as above, Laym. c. 1, n. 9, Pal. p. 4, §. 4, n. 49, Bon. p. 1, n. 40, Sanch. l. 9, d. 22, n. 9, Conc. p. 402, n. 34, Croio n. 394, and Boss. n. 294, with Soto, Con. Fill. Vict. Lop. Henr. Reg. Aversa, Hurt. etc. The reason is that, although these individuals retain dominion, they are nevertheless incapable of exercising it.

Exception 1: If there is a danger of prodigality concerning the procreation of offspring, because although they themselves may not sin, the act of procreation is materially evil.

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Exception 2: If one is not entirely insane, but only insane in one or the other sense. Sanch. n. 6, Boss. n. 297, or if one is only foolish, but not entirely of unsound mind, or if one requests it while having a lucid interval. Boss. n. 298 and 299, with Sanch., Ric., and Conc.

Although there is no obligation to grant the marital debt to an insane or drunken spouse, it is nevertheless permissible to grant it, as commonly stated by the aforementioned authors, because the use of marriage is in itself licit, and the children can be raised by a spouse of sound mind. However, (it must be understood) that there must be no danger of scandal, or abortion; hence, Sanch. n. 7 and Boss. n. 302 rightly add that it is not permissible to cohabit with a spouse who is insane and furious, unless the spouse has been proven to be sterile.

One would also sin who would join in copula both spouses who are insane, because it would be the cause that the children would lack proper upbringing. Sanch. n. 5, with Led. and Lop., and Boss. n. 303, with Bonac. Con. Laym. P. Soto, Fill. etc.

"7. Although he who, having entered into a marriage contract, knowingly and prudently voluntarily discovers the consanguinity of his wife in the first or second degree, cannot demand the marital debt," (from exception 1 of "Concerning him who discovers," see the remarks n. 4070), "he is nevertheless bound to grant it. The same is true of him who, unknowingly, has vowed chastity after the marriage has been consummated. However, if he had vowed before, he seems to be obligated to enter religion, at least for the first two months (unless the marriage has been consummated); indeed, even afterwards, if the wife consents, about which more will be seen in Laym. c. 44, n. 40."

"950. — "Response 2. The spouse is not bound to grant the marital debt if he reasonably fears a grave harm, or danger to himself, or to the offspring. Perez dist. 50, sess. 4. Therefore, he is not bound in the following cases: 1. If the husband requests it while suffering from a contagious disease, e.g., the plague, pestilence, leprosy, etc. (unless this was known before the marriage, and is not too grave) Bon. q. 4, p. 1, n. 8. Perez d. 50, Sanch. l. 9, d. 14, Laym. l. 5, tr. 10, p. 3, c. 4. Question: Is the spouse bound to grant the marital debt to the other spouse who is suffering from a contagious disease, such as leprosy, plague, consumption, the plague, or the like?

[*Latin ed. p. 133*]

It is certain 1. That spouses are bound to fulfill their conjugal duties, even with some slight detriment, for the law of justice prevails in this matter, obliging them under a grave duty when the debt to be rendered is of a serious nature; thus, generally, Sanchez, book 9, title 24, number 2, with Soto, Navarez, etc., and Bossuet, book 2, chapter 4, number 168, at the end, with Bona Re and Valois. Therefore, they say in the Third Part of the Summa Theologica, question 64, article 4, ad 4, and in the Ricardus and

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others cited by Sanchez, book 9, title 24, number 45, that the wife is bound to render her debt to a leper husband, according to chapter 2 of the De Conjugis Leprosus, which states: "If a man or a woman should become a leper, and the sick one demands the carnal debt from the healthy one, the general precept of the Apostle is that it should be given; and in this case, no exception is found to this precept." The reason is that, since the union is brief, there is no danger of infection from it; and therefore, the Third Part of the Summa Theologica, question 64, article 4, ad 4, states: "She is bound to render..., but not... to cohabit..., because one is not infected so quickly by intercourse as by frequent cohabitation." However, it is generally limited by the Doctors, if 1. There is a notable danger of infection from such intercourse, according to medical judgment; thus, Bossuet, chapter 7, number 184, with Laime and Sanchez, title 24, number 47, with Saint Antoninus, Navarez, Soto, Paludanus, Cajetan, Victor, and others. It is also limited if 2. The healthy spouse has such horror of intercourse with a leper that it is morally impossible for him; for there is no obligation from impossible things, according to the law of impossibilities in the jurisprudence; thus, Sanchez, number 21, and Bossuet, number 194, with Hostiensis, Panormius, Sylvester, Pontius, Soto, Barbatus, Laime, Regius, Villalobos, and others.

It is certain 2. That a spouse is not bound to render his debt if it involves a serious danger to his own life or health, as stated in the Third Part of the Summa Theologica, question 64, article 4: "A man is bound to render his debt to his wife..., but only with due regard to the safety of his person." And thus, generally, all agree (see Sanchez, title 24, number 2). The reason is, as stated in the Third Part of the Summa Theologica, that "there is a natural order in which one first perfects himself, and then communicates his perfection to the other; and there is also an order of charity, which perfects nature."

It is certain 3. That a spouse is not only not bound, but also cannot render his debt if it involves a serious danger to his own salvation, because no one is the master of his own life; thus, generally, Palangius, part 4, section 10, number 4, Pontius, book 10, chapter 14, number 3, Sanchez, book 9, title 24, number 8, with Soto, Cajetan, Arminius, Leander, and others, and Bossuet, chapter 4, number 499, with Laime, Conciliarius, and Fillius. And this is true even if that serious detriment threatened only the one who is to render the debt, as stated by Sanchez, number 9, and Bossuet, number 209, with Soto, Aragona, and others; in that case, the one rendering the debt could only be excused if he feared imminent danger of death from the other. However, Sanchez, number 22, with Leander, Palangius, Vega, Manes, and others, and Laime, Azor, Fillius, cited by Bossuet, chapter 4, number 489, limit this, if the healthy spouse already knew of the other's contagious disease before the marriage, because (as they say) in all contracts, when a defect in the thing is revealed, the contracting parties are bound no less than if the thing were without that defect. But this limitation is rightly

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rejected by Palangius, book 10, chapter 14, and Angelerius, and Villalobos, cited by Bossuet.

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n. 489. For he who acquires a thing that he knows to be harmful, yields his right to it, and may rightfully do so; but the spouse, as we have said, cannot yield the right to preserve his or her own salvation. However, it is probable that a spouse can return to the other, even when infected, and even at the risk of grave danger to his or her own health:

I. If it is necessary for the common good. Sanchez, d. 24, n. 44, with Ledesma, with no one dissenting, as he asserts.

II. If the infected spouse, by requesting it, is in probable danger of incontinence, for although a healthy person is not even in that case obligated to return [the spouse] at the risk of his or her own health, as Laym. c. 1, n. 5, Pont. l. 40, c. 44, n. 2, Sanchez, d. 24, n. 12, Boss. n. 204 and 205, with Major, Reg. Comit. et Vill. ac Pal. p. 5, §. 40, n. 4, with Con. (against Gabr., Led. and Rodr.) maintain, both because charity does not obligate with such a burden, and because the other is not in extreme necessity, since the other can provide for himself; nevertheless, it is permissible to return, and to undertake such a risk out of charity; for, although a person is not the master of his own life, he can nevertheless expose it for the sake of charity, as Pont. l. c. n. 4, etc. 2, n. 7, Sanchez, n. 12, Bon. q. 4, p. 1, n. 8 and 4, and Boss. n. 294, with Major, Vill. Con. Aversa, P. Soto, Laym. Hurt. Comit. and Reg.

III. If the return is made to avoid great discord, or to foster conjugal love; and also to avoid the danger of one's own incontinence, and in that case, he or she can also request it; for the avoidance of incontinence, or the preservation of peace in the family and conjugal love, outweighs the obligation to avoid the danger of infection.

However, all of this must be understood (as we have said in n. 909) if the disease is long-lasting and almost habitual, such as leprosy, the French disease, consumption, etc., and not if it is one of those that usually brings death quickly and easily, such as the infection of the plague or leonine leprosy.

IV. I add that if the healthy spouse can easily avoid the contagion or its danger by means of preventative measures. Just as a healthy spouse cannot return the infected spouse at the risk of his or her own health, so too an infected spouse cannot return the healthy spouse at the risk of that person's health, even if that person requests it, being already aware of the danger. For it is not permissible to return a sword to one who wishes to kill himself, since no one is the master of his own life; thus Sanchez, l. 9, d. 6, n. 47, Pont. l. 40, n. 2, in fin., and Boss. c. 1, n. 209, with Soto, Con. Azor, etc., generally. However, it is probable that Busemb. n. 909, with Perez, Bon. p. 6, n. 8, Sanchez, d. 24, n. 23, with Cajet., P. Soto, Crass. and Boss.

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d. n. 209, in fin. (referring to n. 495), with Laym., Pont. and Reg., hold that if the return is made to avoid the danger of incontinence in oneself or in the other, or to avoid discord, or to avoid being long deprived of the use of marriage, which is hardly possible without the danger of incontinence, it is permissible. And this must also be understood if the disease is long-lasting and not immediately leading to death; also, if the healthy person requesting it is already aware of that person's illness, according to what was said in n. 909.

Doubt 1.

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951.—Can a spouse be compelled to perform the marital act, when the danger of harm to the unborn child is feared? Medina and Palacius, citing Sanch., book 9, title 24, number 24, deny this, arguing that no one is obligated to fulfill a debt if it would harm an innocent person. However, D. Th. (Decretum) in book 4, title 32, question 1, article 1, section 4, and S. Anton., book 3, part 1, title 4, chapter 20, section 40, and Sanch., number 25, along with S. Roman., Palud., Sylv., Led., and others, as cited by Boss., chapter 1, number 436, with Soto, Laym., Reb., Fill., Reg., and Vill., generally and more correctly affirm this. D. Th. provides the reason in the aforementioned passage: "A wife is obligated to perform the marital act even if she is suffering from leprosy; and although a deformed child might be born, it is better that it should exist in that condition than not to exist at all." However, is it permissible to perform the act during pregnancy, or during menstruation, or after childbirth? See the statements in numbers 926, 925, and 926.

952.—2. If the husband requests the act from a wife who is suffering from a fever or other illness that would harm her: Bonaventure, question 4, part 4, number 4, as cited by Sanch., etc., ipm Per., in the aforementioned passage, states this. (Or, as some claim, during menstruation: Bonaventure, question 4, part 3, number 41, and part 6, number 40, contrary to Sanch., Hurt., Per., book 4, title 3, section 3: see the statements in number 925.) Or, if the wife is pregnant, and the performance of the act poses a probable risk of death (or even abortion) to the child: indeed, it is not permissible to request or perform the act at that time, as is evident, says Laym., chapter 1, number 7, and Perez states the same in book 4, title 3, section 3 (adding, citing Sanch., Conin., and Hurt., that when the danger to the child ceases, the use of marriage is permissible). (See the statements in number 924.) Or, if the wife cannot fulfill her duty except through surgical means: Bonaventure, question 4, part 4, and section, number 14. (However, Laym., question 7, number 7, states that it is permissible, indeed even necessary, to perform the act in such a case; which Bonaventure concedes in the aforementioned passage, if it is done to avoid incontinence.) Or, if the wife cannot fulfill her duty except under the imminent threat of death: Bonaventure, in the

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aforementioned passage, number 7. Laym., in the aforementioned passage, number 6. However, Laym., citing Sanch., book 7, title 102, number 44, suggests that it may be permissible to allow the act to be performed, and the duty fulfilled, to avoid incontinence, or for some other grave reason: (See the statements in number 952.) Finally, due to a serious illness (but not ordinary pains of childbirth), a spouse may refuse the marital act, even if it would pose a risk of incontinence in the other spouse. Sanch., Præp., Palad., Dian., page 6, volume 7, rule 64, and page 9, volume 7, rule 4. (See the statements mentioned above in number 950.)

3. If one spouse demands the act in an unnatural manner, unless it is feared that refusing would lead to greater evils, such as quarrels, hatred, or incontinence: (See the statements in number 946.)

953.—It is generally held that a wife is not obligated to perform the marital act if she knows that she cannot do so without a probable risk of death: Laym., chapter 1, number 6; Bonaventure, part 4, number 7; Sanch., book 7, title 102, number 9; and Boss., chapter 1, number 478, with Conin., Reg., Fill., and Rod., because the fulfillment of a debt does not obligate if it involves such detriment. What if the mother knows that she will bear children?

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Whether the deceased [child] should be returned? In this case, Layman, no. 7, states that the wife can rightly return it, because this matter happens accidentally; and moreover, it is better for the child to exist with original sin, than not to exist at all; however, Bossuet, in the same place, and Bona, no. 14, with Rodriguez, Victorius, Ledo, and Regius, hold that she cannot return it, because the mother, by the death of the child (as Bossuet also says), is exposed to great danger to her life. However, Bona, in the same place, with others, excepts, unless there is a danger of incontinence, and Sanchez, in book 7, title 102, no. 8, agrees with this, adding that if spouses were always to abstain from the use of marriage for this reason, they themselves would be in the greatest danger of incontinence. But is the wife, who cannot return the child because of the narrowness of the womb, obliged to undergo an incision? See the aforementioned, nos. 1099, 954. — "Is it ever permissible to prevent the generation of offspring? Answer: Spouses may indeed do something for a serious reason, from which, by accident, an emission of semen may result; however, they sin if, in the use of marriage, or after its use, they do something that prevents conception, or if the conceived semen is rejected. The reason for the former is that generation is not prevented, not even indirectly, but only permitted, so that what is licit for a reasonable cause is not done. The reason for the latter is that they act against faith, and the principal purpose of marriage. Therefore, such actions are not excused by imminent poverty, or by danger from childbirth. Therefore, it is resolved: Is the conjugal act interrupted, even if, by natural inclination, a pollution is

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to follow, provided there is a just reason for interrupting it, e.g., if there is a danger of illness or death from an enemy, or if someone else intervenes? See Pereira, book 4, title 49, section 9. (So also Sanchez, book 9, title 49, no. 4; Palafox, page 4, section 3, no. 3; and Bossuet, chapter 9, no. 60, with Lessius, Perez, Aversa, and Salm, on marriage, chapter 45, page 6, no. 84, with Cajetan, Dictionary, etc.) 2. The woman probably sins who, in the use of marriage, distracts herself with something else, so that nature is not aroused, but venially, as Sanchez teaches from Pereira, in the same place, no. 7. (But it is truer that this is mortal, according to the statements in no. 948, see above. Returning to the matter.) Sanchez, in book 9, title 20, no. 3; Pontius, in book 40, chapter 43, no. 1; Salm, ibid., no. 75; Bona, page 6, no. 48, with Rebellio, Hurtado, and Regius; and Bossuet, chapter 9, no. 3, with Fillius, Fagius, Diana, and Villalobos, say that the wife will sin mortally if, immediately after copulation, she urinates, or gets up, or does something else, with the intention of expelling the received semen, because she frustrates the end for which the semen is instituted by nature; thus, the aforementioned authors, against Tamini, Decisions, book 7, chapter 3, section 5, no. 14, who, with Belloccio, excuse this from being mortal, on the same grounds that the womb of the woman, with the emission of semen, always retains what is necessary for generation. It is said that if the woman does this immediately, and with the intention...

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The seed should be expelled, for if this were done out of necessity, such as to avoid the danger of death, or the scandal of others, all agree that one does not sin; just as it is agreed that it is not necessary for a wife to remain motionless and supine for a long time after intercourse, because the womb attracts the seed in a short time, and closes very tightly. However, it is doubted here 4. whether a girl who has been violently assaulted can licitly expel the semen of a man immediately introduced, so that she does not conceive? Sanch. affirms in book 2, chapter 22, number 47, and Bossuet in chapter 9, number 5, along with Raynaud, Marchant, and Diana, and Escobedo considers it not improbable in book 25, number 304, because (as they say) at that time the girl licitly expels the semen as an aggressor on her honor, since it is not yet in peaceful possession of the womb. But Pontius in book 9, chapter 40, number 4, and Tamborini in book 7, chapter 3, section 5, number 14, maintain the opposite, and Escobedo also holds this view as more true, along with Leander. I also adhere to this view, book 4, number 394, see. They say, and I also adhere to this, although led by a different reason. The reason why this opinion seems to me to be correct is that it is never licit to eject semen that has been spilled and received into the womb, where, as soon as it is received (which I believe happens immediately), it has its peaceful possession; therefore, a woman cannot expel it, because she would inflict an injury on nature, or on the

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human species, whose propagation is hindered. However, it is rightly and commonly said by both the older and the newer Doctors that a woman who has been violently assaulted can rightly turn herself (indeed, I say she is obligated to do so) and interrupt the flow, even if the semen of a man was to be spilled outside the vessel; for then the semen introduced is not expelled, but is prevented from being introduced, and therefore it is licitly repelled at that time as a violent aggressor on her honor. Doubt 2. Whether it is licit for spouses to have intercourse if, due to old age or another condition, it often happens that the semen is spilled outside the vessel? Bossuet affirms this probably in chapter 7, number 190, Bonaventure in page 6, number 47, Spotorius in number 222, Layman in book 3, section 4, number 49, Sanch. in book 9, chapter 47, number 24, along with Henry and Croix in number 318, along with Gabriel, provided that there is a probable hope of sowing within the vessel, because such hope is always and present, they have the right to intercourse, and if the semen is spilled, this happens by accident: see the aforementioned number 4066, at the end. DOUBT III. Can a divorce be granted, and for what reasons? 955 A divorce is granted concerning the bond, I. If there are sufficient indications of the death of the spouse. II. If one of the parties converts to the faith. III. If one becomes a religious before consummation. IV. If the Pope grants a dispensation in a valid marriage. 956 Concerning the indissolubility of marriage. 957 If an unfaithful person converts, is it licit for the faithful person to enter into other marriages? 958 Among the faithful, a valid marriage is dissolved only by a religious profession. 959 Is it also dissolved by a papal dispensation?

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960 It is permitted to grant a divorce, in certain cases, I, on account of the adultery of the spouse.

961 Q. I. Does a suspicion of adultery suffice for a divorce?

963 Q. II. Is it permissible to grant a divorce on account of sodomy, or bestiality committed by the spouse? Q. III. On account of copulation without procreation?

963 Q. IV. Is a husband obligated to divorce his wife if he knows of her adultery?

964 Q. V. Is a wife obligated to divorce her husband if she knows of his adultery? And is an innocent spouse obligated to receive back the adulterous spouse who has repented?

965 Q. VI. In what cases may a spouse not be permitted to separate from the adulterous spouse? I. If both are guilty of adultery. II. If the spouse consents to the adultery of the other. III. If the adultery occurs without fault. IV. If the offense is forgiven.

967 Doubt 1. After a divorce is granted by a judge's sentence, can the innocent spouse recall the adulterous spouse?

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968 Doubt 2. What if, after a divorce, the innocent spouse also commits adultery?

969 Doubt 3. Can a husband dismiss his adulterous wife on his own authority?

970 After a legal separation, a husband can enter religion, even if he had previously lived with an adulterous wife; the adulterous wife, however, cannot do so without the consent of the other.

971 A divorce is permitted II. on account of the cruelty of the other spouse.

972 Q. 1. Can a spouse, for this reason, separate from the other on his own authority? Q. 3. Can a religious man separate from his wife against her will? Q. 3. What kind of cruelty is sufficient to warrant a divorce?

973 A divorce is permitted III. to a spouse if the other draws him into sin.

974 A divorce is permitted IV. and sometimes even commanded on account of the other's loathing.

975 A divorce is permitted V. on account of mutual consent.

976 After a divorce, with whom are the children to be raised? And at whose expense?

977 Is a wife obligated to follow her husband to a place of cohabitation?

955. — R ESP. 4. And if a marriage consummated between Christians cannot, in any case, be dissolved, concerning the bond, while both spouses are living (See Sanch. and Per. d. 25. s. Q. and d. 55. s. 4.), a divorce, or rather a separation concerning the bed, (Here an error has occurred, for the word "torum" should be "vinculum," otherwise what follows does not make sense), is granted in the following cases: I. If one spouse dies. If this is certain, the other can marry again; but if, in the meantime, the other has not died, yet sufficient fame and evidence are present, the one who is about to marry is excused, and if doubt arises as to whether the former is still living, they must be separated, since it is possible that the former is not living, and therefore the marriage is valid. (See statement no. 906. Doubt 3.) II. — If, of unfaithful spouses, one is converted to the faith, while the other remains unfaithful (at least unless he wishes to live together peacefully, without offending the Creator); and this is done by divine dispensation, for the sake of the faith, as is clear from 1 Corinthians 7:15. Per. d. 26. s. 4. etc. commonly. III. If, before the consummation of the marriage (which must take place within the first two months, which are given for deliberation, and in which they are not obligated, nor can they be forced without injustice), one of the spouses enters religion, and professes his faith therein. Perez. l. c. etc. commonly. IV. If the Pope grants a dispensation for a just cause before

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consummation.

[*Latin ed. p. 139*]

Thus, a more probable opinion affirms that it is so. *Navigium Bellicum*, *Peritus*, d. 20, sect. 7, 956. — It is certain that 4. among Catholics, marriage is indissoluble, as declared by the Council of Trent, session 24, in its decrees. And this is true in itself, not only concerning consummated marriages, but also concerning those that are merely valid; see Salmanticensis, *De Matrimonio*, chapter 4, page 4, doubt 4, number 44. This indissolubility arises from natural law itself, because it is necessary for the upbringing of children that parents perpetually dedicate themselves to their well-being; thus, commonly, in *Summa Theologica*, 3, part, question 67, article 4; Bellarmine, *De Matrimonio*, book 4, chapter 42; Pontedera, book 4, chapter 42; Bonaventure, page 44, number 2; and Salmanticensis, ibid., numbers 46 and 47, with Palearius, Becanus, and others, against Sanchez, book 2, chapter 45, number 7, who holds (but less probably) that marriage is not necessarily indissoluble in itself. Although, formerly among the Jews, a bill of divorce was permitted, as in Deuteronomy 24, it was nevertheless forbidden by Christ the Lord in the New Law, Matthew 19, where it is written: "And I say to you, that whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery: and he that shall marry her that is put away, committeth adultery." Note that the phrase "except it be for fornication" (as commonly explained by interpreters, see Cornelius à Lapide) does not mean that, if fornication occurs, a man may take another wife, but rather that he may separate from her. It is certain that 2. among non-believers, marriage is valid, if it is legitimate, that is, celebrated according to the laws, as is clear from the decree *De Infidelibus*, concerning consanguinity. It is certain that 3. if both spouses are converted to the faith, the marriage becomes ratified, that is, indissoluble, according to the decree *Quanto*. Regarding how the marriage is consummated after conversion, the Pope can, in certain cases, grant a dispensation in this matter for a very urgent reason, as we have said in number 797. This is probable, according to the decree of Urban VIII, and is strongly defended by Benedict XIV in a certain dissertation mentioned in *Synodus*, book 6, chapter 4, number 6, where Saint Pius V and Gregory XIII are said to have put this into practice. It is certain that 4. if one is converted, and the other does not want to cohabitate, unless it be with an offense to the Creator, or with blasphemy against the divine name, then the believer is free to enter into other marriages, as is expressed in the same decree. Regarding how the marriage is consummated after conversion, the Pope can, in certain cases, grant a dispensation in this matter for a very urgent reason, as we have said in number 797. This is probable, according to the decree of Urban VIII, and is strongly defended by Benedict XIV in a certain dissertation mentioned in *Synodus*, book 6, chapter 4, number 6, where Saint Pius

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[*Latin ed. p. 140*]

The second opinion absolutely affirms, and Bellarmine holds this view in *De Matrimonio*, chapter 12. The reason for this will be presented shortly in the third opinion. Bellarmine states that the text cited by St. Paul does not contain a precept, but only a counsel, since the Apostle immediately adds: "I speak, not the Lord." The third opinion is more common and probable, as held by Sanchez in *loco citato*, number 9; the Council in *Decreta*, page 224, number 5; Pontedera in *Tractatus*, book 9, chapter 4, number 22; Tournhem in *Praelectiones Theologicae*, treatise on marriage, question 8, on impediments, dispute 3, reason 3; and others, as cited by Salm in *De Matrimonio*, chapter 4, page 2, number 43. They state that, if there is no danger of perversion, a Christian could not validly enter into another marriage, because there was no reason to separate from an unbelieving spouse, since, through the miracles which were more frequently performed by Christians at that time, many unbelievers were converted to the faith; but today, since such frequent miracles have ceased, it is illicit to cohabit with an unbelieving spouse, according to the custom received by the Church, which was introduced because experience has shown that there is a considerable danger of perversion arising from cohabitation with an unbeliever; unless, that is, the Bishop grants a dispensation for cohabitation due to a probable hope of the unbeliever's conversion, as Tournhem in *loco citato*, question 4, observation, and Sanchez in *Disputationes*, number 75, number 43, state. However, it should be noted that, according to St. Thomas in *loco citato*, the Council in *Decreta*, page 225, number 7, and Petrocorsini in *Disputationes*, page 431, citing the aforementioned, that marriage is not dissolved until the Christian enters into another marriage. It should also be noted that, before a Christian enters into another marriage, he must warn the unbeliever, if he wishes to be converted to the faith, according to the precept of Gregory XIII and St. Pius V, as stated by Pontedera in *Tractatus*, book 7, chapter 48, number 23; Sanchez in *Disputationes*, number 74, number 12; and Croice in *Tractatus*, number 408. However,

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Sanchez in *Disputationes*, numbers 43 and 14, and others, contrary to Pontedera, state that, if it is known that the unbeliever is obstinate, or if he lives far away, this is not required. Croice in *loco citato* notes that, in the case where the unbeliever cannot be warned, a dispensation from the Pope is required to enter into another marriage, as the aforementioned Gregory XIII had already prescribed in 958. Marriage between Christians is never dissolved, unless one of the spouses enters religion within two months of the marriage being contracted and not consummated, as stated in the decree *Si quis conjugatus*, causes 27, question 2, and in the Council of Trent, session 24, canon 6. However, this is understood, as we have said in number 870, in fine, only if the marriage was not necessary to legitimize a child, or to repair a scandal, or to protect the honor of the spouse; otherwise, a man could not become a religious, leaving his spouse, who, due to the scandal, could no longer enter into marriage. Sanchez in *Tractatus*, book 2, disputation 25, number 27; Pontedera in *Tractatus*, book 9, chapter 9, number 7; and Salm in *De Matrimonio*, chapter 4, page 4, number 90, along with the Council of Constantinople and the Council of Duz, state that, if a spouse enters religion after two months have passed, he would falsely claim that the marriage is not yet consummated, but validly, because the Council in the aforementioned canon 6, pronounces in general terms: "If anyone should say that marriage is not ratified and consummated by a solemn profession of religion."

[*Latin ed. p. 141*]

Third, let it be an anathema if the bonds of marriage are dissolved. However, for a marriage to be considered consummated, it is not sufficient that the male and female genitalia are joined; rather, the emission of semen into the female is required; thus, generally, the Doctors agree, as in *Concilium* p. 252, n. 4, and *D. Th.* See the aforementioned, n. 1036, v. Here. Furthermore, either spouse may lawfully deny the marital debt within the two-month period, even if they do not intend to enter religion, because they are exercising their right; thus, generally, as in *Pal.* p. 2, §. 5, n. 7, and *Salm. de matr.* c. 4, p. 4, n. 91, with Soto, *Con. Led.*, Henry, Die, and Trull. However, the betrothed would sin (as we said, n. 870, d. 2, in fine) if they entered into marriage with the intention of entering religion.

959. — Can the Pope, by dispensation, dissolve a marriage that is valid but not consummated? There are two probable opinions on this matter. The first opinion denies this, and it is held by *Pont.* l. 9, c. 3, n. 3, *Pal.* d. 3, p. 2, §. 2, n. 3, *Gonet* d. 5, n. 13, as well as St. Bonaventure, Scotus, Vallensis, Soto, *Led.*, etc., as cited in *Salm. de matr.* c. 4, p. 2, dub. 3, n. 58. The reason is that a valid marriage is of the same nature as a consummated marriage, the indissolubility of which (as declared by the Council of Trent, session 24, in the beginning) is by divine law, in which the Pope has no power. The second opinion affirms this, and it is held by Bus, Sanch. l.

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2, d. 14, n. 2, Bellarmine l. 2, *de Monach.* c. 8, Navar. c. 22, n. 21, and *Salm.* ibid. n. 64, with Cajetan, Vasquez, *Con. Bon.*, Reb., Bec, etc. The reason is that the Popes have often used this practice by granting dispensations in valid marriages, as reported by Navar and Cayetan. Furthermore, the Supreme Pontiff, as the vicar of Christ, to whom the governance of the Church is entrusted, can rightly dispense in certain matters that are of divine law, and which concern human actions, for a just cause. A just cause (as the aforementioned authors say) would be either a subsequent impotence, or an imminent scandal, or a newly discovered sterility, when it is necessary for the public good that offspring be born. They also add that if there are differences in condition, contagious disease, foreseen disagreements, or mutual consent of the spouses, it may be permissible. However, the Council does not admit these four causes, p. 247, n. 20, and rightly so, at least unless there is an urgent necessity for the public good; otherwise, with these causes admitted, few valid and firm marriages could stand.

960. — • Resp. 2. Even if the bond of marriage remains, a divorce, and separation, whether regarding the bed or cohabitation, may lawfully be granted for a time, or permanently, for a grave and just cause, such as: I. The adulterous act of one of the spouses (by which is also understood every kind of luxury in which the flesh is united with another, such as bestiality, or sodomy, even within the same sex. *Bon.* quæst. 4, p. 5, n. 2, contra Fill., Sanch., Perez d. 56, s. 4, and 2, from Matthew 5, and from chapter Gaudemus, chapter Ex litteris. However, softness, or pollution, kisses, impudent touches, or embraces are not included. *Bonac.*, Sanch., Perez, l. c. It is lawful to separate for a time because of similar reasons, as...

[*Latin ed. p. 142*]

"The guilty party must be reformed" (as stated by Salmanticensis in *De Matrimonio*, chapter 46, page 1, paragraph 40, with Sanchez and the Council of Trent). "For then the innocent party can enter into religion, or even receive the sacred orders; but the guilty party cannot, unless with the consent of the innocent party." However, there is an exception to this rule: if both spouses are guilty of the same crime, or of an equal offense (Sanchez, book 19, title 6). "Unless the innocent party has forgiven the other." Some believe that the innocent party may have done so if, after the adultery, they have clearly understood the situation. (Bonifacius, *Decretum*, Henry, Fillius, part 3). Several other cases are also excepted (1). It is certain that a man can divorce an adulterous wife, as taught by Christ the Lord in Matthew 5 and 19, and this is expressed in chapters *Gaudemus*, *Ex Litteris*, and *Significasti*, concerning divorce. The same is commonly said by Doctors concerning a husband whom the wife may divorce; thus, Sanchez, book 10, title 3, number 6; Pope, book 9, chapter 46; and Salmanticensis, ibid., number 2, with the Council of Trent, in *De Trullano*, chapter 32, question 5, and chapter *De Idololatria*, 36, question 4, 964.

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Question: Is suspicion of adultery sufficient to grant a divorce? It is expressly stated in chapter *Dixit Dominus*, causes 32, question 4, where Saint Jerome says: "Wherever there is fornication, or suspicion of fornication, the wife is freely divorced." However, Doctors Thomas (in *Quæstiones Disputatæ*, 4, question 35, article 1, argument 3, ad 4) and Viva (in *Quaestiones Morales*, 8, article 2, number 4) commonly state that any probable suspicion is not sufficient, but that a strong suspicion is required, which provides a moral certainty, as if it were proven that the spouse was seen alone with the other, and naked with the other, as stated in chapter *Cæteris*, 12, concerning presumptions. Paludanus (page 6, section 4, number 8), with Farina, Guttmann, and others, states that this is required by the authority of the Church to grant a divorce; however, with regard to the internal forum, it is said that a probable suspicion is sufficient, provided it is strong. But this must be understood: although in the internal forum, such certainty is not required as in the external forum, nevertheless, such suspicion is always required, so that there is not only probability, but also moral certainty of adultery; otherwise (as Viva rightly says in the cited work), neither party can be deprived of their certain possession based solely on a probable suspicion. Therefore, unless other circumstances are present, embraces, touches, and kisses are not sufficient to grant a divorce (1).

The Code of Civil Law (clv. gall. art. 227 and 395) had stipulated that marriage itself could be legally dissolved by divorce; however, this doctrine was changed by the special law of May 8, 1816, so that divorce only meant separation of the spouses. Furthermore, article 228 states that the mutual consent of the spouses, which is constant and legally expressed, is a just cause for granting a divorce, which is certainly contrary to Canon Law. Furthermore, in civil court cases of divorce, the causes are adultery, cruelty, and the dishonoring of one of the spouses with a shameful reputation, as stated in articles 229 and 232. It should also be noted from article 230 that the wife can only divorce the husband for adultery if he is currently living with a concubine under a marriage contract.

[*Latin ed. p. 143*]

Divorce; thus, Pont. l. 9, c. 46, no. 5; Viva l. c.; Sanch. no. 47, with Nav. Palud.; Perez, Barb., and Lop.; and Pal. p. 6, §. 1, no. 2, with Con. Hurt., etc. Moreover, it is not sufficient that someone is found alone with another in a secret place, as Sanch. no. 45, with Nav. against Menoch.; rather, it suffices in the forum of conscience if a man of the most upright faith testifies to adultery, or to a violent indication; as Sanch. no. 54, Viva l. c., and Pal. p. 6, §. 4, no. 8, with Gutt. Menoch., etc. Furthermore, as Pal. states, §. 4, no. 8, with Menoch., love letters from the wife, in which she confesses a past adultery, are sufficient. And I also believe that it suffices if someone is seen alone with another in the same bed. 962.

Question II. Is it permissible to divorce due to sodomy or bestiality com-

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mitted by a spouse? The first opinion denies this, and it is held by Innocent, Abul., and Palac., as cited in Sanch. l. 16, d. 4, no. 2. The second opinion, speaking speculatively, also follows this, as found in Pont. l. 9, c. 46, no. 5. The reason is twofold: first, because the body is divided by fornication alone; second, because the penal law, such as this is, should not be extended from case to case; furthermore, the texts in c. Gaudemus and c. Litteris de Divor., as mentioned above, speak only of fornication. The second opinion, however, which is more common and more probable (at least externally), affirms this, and it is held by D. Thom. Suppl. quæst. 62, art. 4, ad 4; Sanchez in the cited location, no. 3; Pal. p. 7, §. 1, no. 2; Conc. p. 255, no. 7; Salm. c. 46, no. 9, with Soto, etc. The reason is that, by natural law, each spouse is bound to keep faith by not dividing his body with another, which is what is divided when sodomy or bestiality is committed. It does not object that the penal law should not be extended, because the right to divorce for an adulterer, who divides his body with another, does not arise from positive law, but from natural law itself, which prohibits a spouse from dividing his body with another. However, the authors of the first opinion could always reply that the body is not divided without natural intercourse. Furthermore, as Pont. states in the cited location, one should not depart from this opinion, because it is the common opinion, but rather, it should not be proven.

Question III. Is intercourse had with another without the emission of seed a sufficient cause for divorce? The first opinion affirms this, and it is held by Conc. p. 255, no. 9, citing S. Bonav., Soto, Sylv., Palud., and Vega, and Henr. It does not assign a reason, but the reason seems to be that fornication without seed is true fornication, although it is not consummated, by which the body is divided. It also cites D. Th. and Bonac., without citing specific locations, but Bonac. (as will be seen below) explicitly holds the opposite, and I have not been able to find the passage in D. Thom. where this is stated. The second opinion, however, which is more probable, denies this, and it is held by Sanch. l. 10, d. 4, no. 43; Bonac. qu. 4, p. 5, no. 2; Escob. l. 25, no. 431; and Salm. de matr. c. 46, p. 4, no. 40, with Fill., Trull., and Led. The reason is that, by the name fornication, fornication in its genus is to be understood.

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Perfect, that is, consummated through copulation; otherwise, a true union of bodies does not occur, but rather a mere attempted union, for through copulation alone, adulterers become one flesh.

Question IV: Is a man obligated to divorce his wife if he knows of her adultery? Certainly, he is not obligated for the reason of adultery itself, since this divorce is only permitted by Christ, not commanded, as St. Thomas states (Supp. Quest. 62, art. 2), and others from canon 1, cause 28, question 1. There, St. Augustine said: "The Lord permitted a wife to be

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divorced for the cause of fornication, but because He permitted it, He did not command it; He gave the Apostle the opportunity to warn that he who wishes may not divorce his unfaithful wife." The reason is clear: divorce was introduced for the benefit of the innocent, and therefore it should not be turned against her.

However, a man may be obligated to divorce his adulterous wife for the sake of fraternal correction or to avoid scandal, as taught by St. Thomas (loc. cit.), Palearius (p. 6, § 3, no. 3), Bonaventure (p. 5, no. 45), Salmeron (de Matr. c. 16, p. 1, no. 5 and 6), and others from the passage "If a man, knowing that his wife has sinned, does not repent, but continues in fornication, he will be guilty and a partaker of her sin."

Regarding the obligation of correction, the Doctors generally say that a man is not obligated to divorce his wife if he can correct her in another way, namely, with words or chastisement; thus, St. Thomas (loc. cit.), Salmeron (ibid., no. 7), and St. Bonaventure, Cajetan, Sylvester, Arminius, Covarrubias, Barbatus, and others (cited in Sanchez, l. 10, d. 43, no. 9).

Neither is he obligated if he fears serious inconveniences from such a divorce, namely, the danger of his own incontinence, or quarrels with his wife's relatives, or infamy, or the disruption of domestic governance, and the like, because the precept of correction does not obligate if it involves a serious inconvenience, as St. Antoninus (3, p. tit. 2, c. 20, § 9), Pontius (l. 9, c. 47, no. 4), Palearius (no. 3), Escobar (no. 136), Navarrus (c. 16, no. 28), Bonaventure (d. no. 13), Salmeron (cit., no. 7), and Sanchez (no. 8), with Soto, Paludanus, Ledo, etc., teach.

Furthermore, Layman (c. 7, no. 45) and Viva (Quest. 8, a. 2, no. 5) rightly state that if a man believes that this is the only way to correct his adulterous wife, then, out of charity (understand, if he can do so without serious inconvenience), he is obligated to temporarily separate from her.

However, with regard to scandal, a man is also obligated to divorce his wife, lest he appear to consent to his wife's sin, as taught by St. Thomas (loc. cit.), Sanchez (no. 10), Pontius (no. 3), and Salmeron (ibid., no. 6), and others, from the passage "If a husband retains a persistent wife, he is declared guilty and a partaker of her sin." The same is said in canon 6, cause 28, question 1: "If he perseveres in these things, he must separate from her. Otherwise, he too will be a partaker of that sin."

However, this is understood, as St. Antoninus (loc. cit.), Sanchez (no. 21), Pontius, and Salmeron (de Matr. c. 16, p. 1, no. 7) teach, in the first sense, that the adultery is notorious, not merely suspected. It is also understood, as Layman (d. no. 5), Palearius (no. 3), Pontius (no. 3), Salmeron (loc. cit.), and others (with Dicetus, Pereira, and Bonacini, no.

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43, and Sylvester, Tollet, and Concinius) teach, in the second sense.

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If a husband cannot avoid scandal in any way, then, on the contrary, he ought to do so by other means, namely, by rebuking his wife, by confining her to the house, by chastising her, or by some other moderate form of coercion. But if, after employing these means, the scandal persists, the husband will be excused if he does not divorce his wife for a just cause, namely, because of the danger of her incontinence, or because she is afflicted by poverty or illness, and therefore needs the help of her husband; or because he would otherwise suffer a grave loss; or because his wife is becoming worse, or because she is causing him a notable detriment to his health; or if there is a reasonable hope that his wife will reform, as taught by St. Antoninus, 3, p., title 4, chapter 20, § 9; Palatius, number 3; Salmeron, cited above, number 7; and Sanchez, d. d., 43, number 19, with Soto, Navarrelius, Paludanus, Majoranus, Taberna, Ledo, Palatias, Philarchus, Gabrel, Anglerius, Sylvestrius, Lopus, Arminius, Ricardus, and Abulafia; although not all of the aforementioned authors propose all of these reasons as grounds for excuse. Salmeron, ibid., adds that it is also sufficient reason if more expenses would be incurred in obtaining a divorce through the authority of a judge; or if disputes are feared as a result of the divorce. Finally, St. Antoninus, in the same place, concludes: Therefore, a husband is not bound, to his detriment and to his peril, to expel his wife. Thus, the aforementioned authors; but others say, with good reason, that if a husband has already provided sufficient evidence that he is deeply grieved by his wife's adultery, he is not bound to divorce her for the sake of scandal; because if others are nevertheless scandalized, their scandal is a Pharisaical one, which he is not bound to avoid; thus, Palatias, number 3, with whom Layman agrees, d. n., 47, with Paludanus, who says: "If the husband declares that he does not favor her in her crime, but keeps her with him in order to restrain her from sin, then, even if someone is scandalized, the scandal is due to malice, which is to be disregarded." The same sentiment is expressed in the Glossa in c. "Non solum," cited above, where, with reference to the words, "but if you are a partner in that sin," it is explained: "That is, if you do not dissuade her from her purpose." Therefore, a husband who dissuades his adulterous wife from her purpose is not to be considered a partner in that sin. St. Antoninus, in the same place, makes this clearer, saying: "Because of the scandal of the Pharisees, a man is not bound to relinquish his right; first, the husband ought to declare that he does not favor her in her crime, but rather, in order to better restrain her from sin, he keeps her with him; and with this, it is likely that if anyone is scandalized, it will not be a scandal of the weak, and since he cannot divorce her without his own peril, he may lawfully keep her." From all of the foregoing, Palatias, in the same place, Sanchez, number 26, with Ledo

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and Abbate, and Salmeron, de Matrimonio, chapter 16, page 4, number 7, at the end, with Soto, Pontedecanon, Perez, Trullius, etc., rightly conclude that, for this reason of scandal, a husband is rarely bound to divorce his adulterous wife.

Question V. Is a wife bound to obtain a divorce from an adulterous husband? The first opinion, held by St. Antoninus, 3, p., title 4, chapter 20, § 9, at the end, and by Sanchez, l. 10, d. 14, number 29, with Paludanus, Sylvestrius, Soto, Taberna, Arminius, Sa, Ledo, etc., says that she is never bound to do so: not for the sake of scandal, because,

[*Latin ed. p. 146*]

It is presumed that the wife consents to her husband's adultery; not by reason of correction, because only the superior is permitted to correct by action; but the wife is subject to her husband, and therefore (as D. Antonius says) she should not correct her husband by action, but by word. However, the second opinion seems to me to be more true, as held by Bon. p. 5. n. 43. Con. p. 256. n. 16. Nav. c. 22. n. 21. Antoine p. 587. quæst. 9. Salm. c. 16. n. 7. with Dic. and Perez; also Pet. Soto, Palao, Gabr. Led. etc. apud Sanch. n. 27. It is also said that the wife may sometimes be obligated to correct her adulterous husband, because sometimes the subordinate is also obligated, if he can, to correct the superior in a way that he can; and a fortiori, the wife is obligated to do so, to whom it has already been granted to leave her adulterous husband; provided, however (as Antoine says), that she knows that by this means she can certainly reform her husband: but the Council says better, if there is a probable hope of reformation, because correction should be done well where there is a probable hope, as they say Salm. tr. 21. c. 7. p. 4. §. 3. n. 66. with Suar. Pal. Diana, etc. Truly, the aforementioned authors say that the wife is rarely or very rarely obligated to do this, because very rarely can the wife correct her husband; and very rarely will the wife be able to leave her adulterous husband without great inconvenience. And therefore, she is also obligated to deny him what is due to him: all the more so because by denying him, the husband would become worse, as taught by S. Anton. and Bonac. l. c. with Sanch. Fill. and others. 965. — Whether the innocent spouse is obligated to receive the other who has been reformed from adultery? The Council and Bus. affirm in n. 5. with Laym. and Perez, that this is to be done out of charity, if otherwise he is in danger of relapsing. But I would hardly dare to bind the innocent to this under pain of guilt, since, on the one hand, Christ the Lord has perpetually freed him from the obligation of cohabiting with an adulterer, and on the other hand, charity does not seem to obligate to such a burden, that the spouse should receive the one who has broken his fidelity. Therefore, Salm. de matr. c. 16. p. 2. n. 21. rightly says that the innocent should only reconcile with the reformed out of honesty and decency, if he can do so comfortably. It does not contradict that in c. Si vir adult. it is said: "He must, but not

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often, receive the adulteress": for the Gloss explains: "He must out of duty of honesty, not out of necessity." 966. — Question VI. In which cases is it unlawful for a spouse to divorce the other who has fallen into adultery? The first is, if both are guilty of adultery, then neither has the right to divorce, even if one has sinned once and secretly, while the other has sinned a hundred times and publicly; thus Sanch. l. 49. d. 6. n. 8. Pont. l. 9. and Salm. ibid. n. 42. with Soto, Con. Trull. Dic. and others throughout, from D. Th. in 4. d. 55. qu. un. art. 6. ad 5. It is doubted here, whether in such a case the reformed spouse can divorce the other who perseveres in adultery? There are two probable opinions. The first opinion says no, unless he has already obtained forgiveness for his crime, because his reformation, as they say, injures the other (or the one sin already committed).

[*Latin ed. p. 147*]

It does not extinguish. Thus, Pope, book 9, chapter 47, at the end; Dictionary of Law, Hurt, Bas, apud Salm., ibid., number 13. The second opinion, however, is quite probable, and is held by Sanch., book 10, title 7, number 4; Viva, question 8, article 4, number 7; Avers., Trullan Council, Council of Bon, Reg., Henry, etc., and Salm., on marriage, chapter 46, page 2, number 14, which states that the one who has been corrected may be separated from the other, who does not repent after the correction. The reason is that, as they say, if both spouses reconciled after their crimes, then, if one relapses, the other could certainly withdraw; so likewise in the present case, for the one who has been corrected, by the very correction, virtually offers reconciliation, because the other is bound to accept it, and thus the term for compensation is already established; so that the other no longer has the right to compensate for a new sin with a past sin of the corrected spouse; and therefore, for a new adultery, the right to withdraw is justly granted to the corrected spouse. The second case is if one spouse consents to the adultery of the other; then that spouse loses the right to withdraw, according to chapter "Discretion, concerning him who is compelled, etc." And this is the common opinion, with Sanch., book 10, title 5, number 4; Bon., page 5, number 14, and Salm., ibid., number 15; Trullan Council, etc.; D. Th., Supplement, question 62, article 4. It must be noted here, however, uniformly, that it is not sufficient to presume the husband's consent if he prudently conceals it, or does not rebuke his wife's adultery, because he could not do so without great inconvenience; or if he only gave her a remote warning, as if he treated her lightly; for in other texts, it is established that the adulterous woman is not excused, even if she has been unjustly dismissed by her husband. The third case is if one spouse is adulterated without formal fault, believing it to be due to an excusable error, or if she was forced; thus, commonly, S. Th., book, chapter; Sanch., Council, etc., with Salm., ibid., number 17. However, as noted by Sanch., number 15, if she consented out of fear, she is not excused from guilt because of fear. The

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Dictionary, apud Salm., book, chapter, also notes that if the wife believes her husband to be dead, she may fornicate outside of marriage; but the husband may not dismiss her; conversely, if the husband fornicates, believing his wife to be dead. The fourth case is if the offense has been remitted, either before or after the divorce. However, if, after the remission, there is a relapse, or if reconciliation occurs, the other spouse already has the right to dismiss. Sanch., title 6, number 7; Salm., on marriage, chapter 46, page 2, number 18, and others. It is presumed that remission has been given either by words or by actions, as if the innocent spouse, aware and mindful of the adultery, freely and spontaneously cohabits with the adulterer, as taught by S. Th., Supplement, question 62, article 4; Sanch., title 6, number 19, and title 14, number 6; Salmant., ibid., number 19, with the Trullan Dicastery, Avers., and others, apud Bus. Signs of remission are also that they remain in the same house, at the same table, in the same bed, especially if there are kisses, touches, and embraces. It must be noted, however, that if the innocent spouse truly does not intend to remit the offense by these actions, he can always withdraw in conscience, although divorce may be denied to him in the external forum; thus,

[*Latin ed. p. 148*]

Sanch. d. 14, n. 21, and Fill. Avers. Trull. Vill. cum Salm. dict. n. 49, concerning the end of 967. — But here, a doubt arises: 1. After a divorce is granted by a judge's decree, can the innocent party still compel the adulterous spouse to return? There are two opinions. The first opinion, held by Soto and Led. apud Sanch. lib. 40, d. 10, n. 2, which they call probable, states that even with the decree, the adulterous spouse remains free from the obligation to cohabit and to perform marital duties. The second opinion, and the common one, held by Sanch. n. 3, with Sylv. Henr. Led. Sa, and many others, as well as Pal. p. 6, §. 7, n. 1, Pont. l. 9, c. 49, Bon. p. 5, n. 46, and Salm. ibid. n. 22, with Con. Gutt. Reg. Aversa, etc., teaches that the status of each spouse remains unchanged, namely, that if neither has vowed chastity, the adulterous spouse is obligated to return, because the innocent party does not lose their right by the decree, which is issued only as punishment for the adulterous spouse, and not for the benefit of the innocent party; thus, St. Thomas explicitly states in Suppl. quæst. 62, art. 6, ad 3: "Since the divorce was granted in favor of the husband, it does not take away from him the right to demand marital relations, or to have his wife return; therefore, the wife is obligated to return to him, and to live with him, unless she has made a vow of continence with his consent." And to this, Sanchez correctly states in n. 24 (contrary to Palac.), that a new decree from the judge is not required to compel the adulterous spouse to return. Palac. p. 6, §. 7, n. 3, however, rightly says that it is rarely possible to compel the adulterous wife to return to the husband, due to the prudent fear of death, or of easily inflicted cruelty by him. Doubt 2. If the innocent

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spouse, after a divorce is granted by decree, commits adultery, does that spouse lose the right to the divorce, so that, if the other spouse requests it, they are obligated to return? The first opinion affirms this, because the injury has already been compensated, and the decree has not taken away from the adulterous spouse the right to adultery; thus, Pont. l. 9, c. 20, n. 6, as well as apud Salm. de matr. c. 16, p. 2, n. 23, S. Anton., S. Bonav., Per. Dic. Con. Avers., Sot., Dian., Leand., and Salm. cit. n. 23, call this probable. The second opinion, which I consider to be far more probable, and which is held by S. Th. Suppl. q. 62, art. 6, ad 4, Sanch. l. 10, d. 10, n. 30, and Salm. ibid. n. 24 and 25, Fill. Reg., Bon., Led., and others, states that it is not necessary: because, by the absolutely final decree, the innocent spouse has already been absolved from servitude; and the adulterous spouse is deprived of their right. However, D. Th. l. c. ad 4, adds this caveat: "According to the principles of equity, the judge, by virtue of his office, ought to compel (1) him to take care to avoid the danger to his soul, and the scandal to others, even if the wife cannot seek reconciliation." And on this point, all agree, as Salm. n. 14 (1) states. (1) Namely, to warn.

[*Latin ed. p. 149*]

968. — Question 3. Whether a spouse can dismiss an adulterous partner by his own authority? There are three opinions that are sufficiently probable. The first opinion absolutely denies this, and this view is held by *D. Th. Suppl.* question 62, article 3, where it states: "Divorce cannot be celebrated except by the judgment of the Church." Also, *Conc.* p. 256, n. 14, and *Bellarm.* *Aversa* against *Salm.* book 1, chapter 12, p. 4, n. 46. The reason is that the separation of spouses is a public act, pertaining to the external governance; therefore, it cannot be done by private authority without disturbance. The second opinion, held by *Laym.* chapter 7, n. 8 and 9, *Pont.* chapter 18, n. 2 and 6, and *Salm.* ibid. n. 47, with *S. Ant. Soto*, *Con. Hen. Vill.* etc., distinguishes and affirms that if the adultery is notorious, then it is permissible; however, it denies this if the adultery is hidden, because in that case, the reputation of the spouse would be unjustly harmed. This is confirmed by chapter *Significasti* 4, on divorce, where it is said: "If it is notorious that a woman has committed adultery, the aforementioned husband is not obliged to receive her back, unless it is proven that he himself has committed adultery with another." Also, from chapter *Ex parte* 9, on marriages, it states: "No one is permitted to dismiss his wife without a manifest clause of fornication." The third opinion absolutely affirms that a divorce can be granted without a judgment, whether the adultery is public or hidden, provided that it is certain, and that no scandal arises from the separation, which cannot be otherwise remedied; thus, *Sarich.* book 10, title 12, n. 31 and 32, with *Soto*, *Pal. Heir.* *Abb.* etc., and *Bon.* p. 5, n. 10, with *Sa*, *Led.* *Reg.* *Con.* and *Fill.* *Prob.* 1. This is proven by chapter *Dixit Dominus* 32, question 1, where it states:

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"Wherever there is fornication, or suspicion of fornication, the wife is freely dismissed." Note the word "freely," which indicates that no judgment or permission is required. The reason is that it has been absolutely granted by Christ the Lord to dismiss an adulterous spouse. This opinion has been deemed probable, at least if the adultery is on the part of the wife; for it would be harsh to force a husband who is certain of his wife's adultery to publicly expose her crime through a judicial process, thereby causing him perpetual disgrace. However, *Bon.* in the aforementioned passage, rightly observes that if, after the divorce, a judge compels the spouses to cohabitate, they must obey; but according to this opinion, they are not obliged to do so.

969. — It should be noted here that, after a legal separation, a husband who is a cleric can enter religion, even with the adulterous wife, as stated in *Agatosa* 27, question 2, and he can even receive the sacred orders, as stated by *Salm.* on marriages, chapter 16, p. 4, n. 50, with the common opinion, although the marriage bond remains; therefore, if he, having received religious life or sacred orders, cohabits with another, then further compensation for the crime is no longer granted; however, he would still commit true adultery. Also, if he knew his wife, he would sin in the sin of sacrilege, but not of fornication. This would be the case if the marriage had already been consummated; otherwise, the marriage is dissolved even in its bond by the profession of religious life (but not by sacred orders); *Salm.* ibid. at the end and with the common opinion. It is correct.

[*Latin ed. p. 150*]

Theologians of Salamanca, ibid., n. 52, observe that if an innocent spouse is separated from an adulterous spouse without the judgment of a judge, it would be very difficult, even according to the first opinion mentioned above, for the innocent spouse to receive Holy Orders, because this could scarcely be done without causing scandal. Conversely, the adulterous spouse, even after a legal divorce, cannot enter religion or receive Holy Orders, unless with the consent of the other party, or unless the other party has already taken on an irrevocable state of life. Otherwise, if the adulterous spouse wishes to enter religion or receive Holy Orders, and has already taken on a state of life, this can be revoked from him, and he is obligated to return [what was given]. However, tacit consent is sufficient for this; for example, if one party, knowing that the other wishes to change his state of life, does not prevent it, when he can conveniently do so. And it is also sufficient if one party, when asked, refuses reconciliation, as Sanch. states in book 10, n. 45 and 49, and Salm. in *De Matrimonio*, chapter 16, page 4, n. 54, citing the Council of Aversa, the *Dictio Dianae*, and Bonaventure. Furthermore, Pont. states in book 9, chapter 6, n. 3; Sanch. n. 8, citing others; and Pal. page 6, § 7, n. 2, that if the adulterous spouse is not reconciled after two years, he can

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freely enter religion or receive the sacraments, because at that point he is considered to have tacitly consented to this, as is permitted by law in the *Authentica*. However, today, in the Justinian Code, book *De Adult.*, 970, — "II. Cruelty of husband or wife. If there is a serious danger of harm, a separation can be requested from a judge; indeed, if death is threatened, or poison is administered, a separation can be obtained even without the judge's consent. See Bonaventure in the cited passage, and Layman's *Peregrinationes*, section 3. It is clear from the chapter *Ex Transmissa, De Restitutione Spoliationum* that one spouse can be separated from the other due to the cruelty of the spouse, even if the latter is the cause of that cruelty because of some of his own crimes, as stated in chapter 32, question 1, of the Decretals. However, this is not without the judgment of a judge, and after the crime has been fully proven, as stated in the Council of Carthage, in chapter 33, question 2, of the *Saeculare*.

Now, the question arises: 1. Can one then depart on one's own authority? The answer is yes, if there is an imminent danger (as Busembach states here), or if one could not litigate, or go to a judge, or easily prove the cruelty; thus, Sanch. in book 10, chapter 48, n. 3; Anacl. page 667, n. 440; and Salm. ibid., page 3, n. 38, citing Aversa, Trull, and Villalobos. However, if one can go to a judge and prove the cruelty, he is obligated to wait for the judgment, as stated by Sanch. in the cited passage; Pal. § 4, n. 6; Pont. in book 9, chapter 23, n. 7; and Salm. in the cited passage, footnote 38, and in chapter *Significasti, De Divortio Contra Trull.* and Hurtado. The reason for this is that a judgment is required so that divorces are not granted indiscriminately; furthermore, this cause of cruelty has been introduced by the authority of the Church; and therefore, it is fitting that no one should use it to leave [the marriage] without the authority of the Church.

Question 2: Can one who has justifiably left [the marriage] become a religious, against the will of the spouse? The answer is no, unless there is such a fear of serious harm that it can never be removed, as stated in the chapter *Litterae, De Restitutione Spoliationum*. Otherwise, the divorce will only be temporary, until the danger ceases, with a caution given in court: thus,

[*Latin ed. p. 151*]

Sanch. l. 40. d. 48. n. 8. Salm. de matr. c. 46. p. 3. n. 37. in med. cum Bas. Trull. Fill. Dic. It is noted by Salm. ibid. n. 40. with Dic. that it is scarcely believable that any danger would ever cease, if the spouse were cruel and furious, or so prone to anger that danger frequently arises, and at times the wife is injured; or if poison were administered, even once.

Question 3. What kind of fear is sufficient for divorce on the grounds of cruelty? Answer. It suffices that any serious evils from the spouse, or from his relatives, are prudently feared; for example, if there were threats of death, unjust words, frequent scoldings, and quarrels, from which the

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cohabitation would become excessively distressing, or if there were a danger of induced abortion, or of serious harm to other children, or relatives, etc. Thus, Sanch. l. 40. d. 48. n. 44. and 42. and Salm. ibid. n. 44. with common opinion. However, Salm. cited, n. 44, rightly points out that some of these things, which are serious with respect to a noble woman, will be slight with respect to another of humble condition. Also, Sanchez n. 43. and Roncaglia p. 480. q. 5. r. 4. state that mere threats are not sufficient, unless the spouse is accustomed to carry them out; therefore, the judge must carefully consider the threatening spouse's disposition and manner, according to l. Hæc autem 5. ff. Si cui plus, etc. 972.

Question 4. Are blows alone a just cause for divorce? Some affirm, Bart. Bald. Lupus, Graff. etc. apud Sanch. d. 48. n. 44. Others deny, unless there is a probable fear of death from the blows, as Cujac. etc. ibid. n. 5. Others, most commonly, as Pont. l. 9. c. 25. n. 5. Ronc. p. 180. quæst. 5. r. 4. and Sanch. n. 46. with Host. Abb. Ang. Sylv. Henr. Arm. Tab. etc., say that it is permissible for a man to strike his wife, provided that it is not done frequently, nor for a slight reason, nor severely, although the reason may be great; but rarely, and moderately. Therefore, Sanch. probably says that the wife cannot leave, if the beating is slight, even if she is beaten without cause (Salm. de matr. c. 46. p. 3. n. 44. makes an exception if the woman is noble). Also, Ronc. l. c. Bon. p. 5. n. 5. Pal. p. 6. §. 9. n. 8. and Sanch. n. 46. with Rol. and Rimin. add that it is not permissible for the wife to obtain a divorce from a single beating, even if it is severe, but at least two are required, unless there is a probable fear that the husband will repeat the beatings, considering his nature and circumstances, such as if he keeps a concubine in the house, or even outside the house. 973.

"III. If the spouse draws the other into sin, e.g., incites to heresy, witchcraft, etc." (Add if the man introduces others into the house with the danger that he will attempt adultery. Or if the man wishes to practice sodomy with his wife, even if she refuses to consent, as Salm. ibid. n. 35. with Sanch. Bas. Soto.) "then the innocent person can, indeed must, separate themselves, if the danger is serious. Laym. l. 5. t. 40. p. 3. c. 7. n. 46.

IV. Contagious disease, e.g., leprosy." (Nt D. Th. Suppl. quæst.

[*Latin ed. p. 152*]

64. a. 4. ad 4. where: The wife is bound to render to her husband what is due to her, but not to cohabit with him. However, as Sanchez states in *l. 9. d. 24. n. 29*, this is understood if there is a probable danger of infection resulting from cohabitation. Also, a just cause for separation exists if one of the spouses is mad, or wicked, or possessed, as stated by Salmeron in *dict. n. 35*, with the consensus of others. If, however, it is possible to cohabit without serious detriment, she is bound to do so, or at least to remain in the house and provide sustenance, unless the other party consents otherwise.

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974. — V. Heresy or apostasy arising after marriage. In this case, if a separation has been decreed by the Church, the converted spouse is not bound to receive the other spouse back, at least not out of justice; but sometimes, out of charity, he may be bound to do so, as when there is a danger of incontinence. See Bonaventure, *Laym. loc. cit.*, Part 2, d. 57, s. 4. (Note here that a spouse cannot separate from the other for any trivial reason, but only for serious reasons. However, one can separate from a heretic, even if the heresy is hidden; indeed, he is bound to do so if there is a danger of perversion; see Salmeron, *de matr. c. 46, p. 3, n. 27 and 28*. And if the fault is declared, the other party can even become a religious, as Salmeron states, *ibid., n. 34*, provided that he has separated according to the judgment of the Church, as is clear from *c. De illa, de divort.*, where it is stated that this divorce is declared to be perpetual.)

975. — VI. Mutual consent. By mutual consent, they may separate either temporarily or permanently, for a spiritual purpose, or even simply by living apart. However, this is usually not permitted unless both enter religion, or the wife enters religion (or if she is an elderly woman, that is, sixty years of age, according to Azor, etc., or at least fifty years of age, according to Sanchez, Bona, Barb, Dian, p. 3, t. 4, r. 73, remaining in the world under a vow of continence), or the husband receives Holy Orders.

(However, if the spouse who remains in the world was unaware that he was bound in this case to make a vow of chastity, Sanchez, Fagnan, etc. (contra Anacletus), as cited by P. Ferraris in *Bibl. verb. Conjux, n. 23*, state that he can, with his consent, recall the spouse even from religious life.)

Furthermore, with whom, and at whose expense, should the children be raised after a divorce? See Layman, *hic l. 4*, and Sanchez. See Pereyra, d. 58 and 59, Bonaventure, q. 3, p. 5, n. 44.

976. — The Doctors agree that, after a legal divorce, the children should be raised with the innocent spouse. However, if the divorce occurs due to the fault of the father, the children should be raised at the father's expense, according to the decree. If the father was the cause of the divorce, the children should be raised by the mother, who does not enter into a second marriage, at the father's expense. And conversely, if the divorce occurs due to the fault of the mother, the children should be raised at the mother's expense, as stated in the Glossa on the aforementioned decree, Palatine, p. 6, §. 40, n. 5. See Layman, c. 7, at the end, and Sanchez, l. 40, d. 20, n. 7, with Bartolus, Palatine, *Hist. Sylvest.*, Henricus, Gutt., etc., from the same decree, where it is read: "If, however..."

[*Latin ed. p. 153*]

Concerning the upbringing of children, if possible, they are raised by the father, at the mother's expense; unless the father is less suitable, in which case they are raised by the mother, at her expense. However, Salmeron and Boëtius, and Alexander, cited by Sanchez, in book 1, chapter 5, deny

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that the aforementioned words are in the original text (as the Glossa itself admits), but were inserted by Irnerius. Nevertheless, we must not deviate from the common opinion, as the same Glossa states, because, when a dowry is given to an adulterous woman, and a divorce is effected, it must be returned; natural law demands that she bear the burdens of marriage; otherwise, she would profit from her crime. However, Sanchez, in number 8, rightly observes that, in all cases, the judgment of the judge is absolutely required. When one of the spouses is unfaithful, or a heretic, the children should always be raised by the faithful spouse, even if the faithful spouse is in fault, as Sanchez states, in number 3, Palatinus, in book 1, chapter 1, with others (4), 977. — "Is it the case that the wife is obligated to follow her husband to the place of cohabitation?" Answer: "She is obligated, because the husband is the head of the family, and of his wife." However, the following cases are excepted: 1. If following would entail a grave burden, or danger, such as to life, chastity, or salvation; or if the wife is not provided for by the husband while he is away. 2. If the husband, after marriage, becomes a vagrant, and it is not easy to follow him; otherwise, if he was a vagrant before, and she knew it. 3. If a pact was added to the marriage contract regarding the non-alteration of domicile, and no serious necessity arises. Regularly, the wife is obligated to follow the husband who is changing his domicile, even if he is doing so without a just cause; provided the cause is not scandalous: Sanchez, book 4, title 40, number 2, and 6. And this is so, even if there is a contrary custom in some places, which cannot override divine law, which establishes the husband as the head of the wife, as in 1 Corinthians 7:15. Furthermore, even if the husband goes far away, and intends to stay there for a long time, it is otherwise if he intends to return shortly; thus Sanchez, in the aforementioned book, title 44, number 44, with Panormius, Alexander de Nevo, and Bossuet, chapter 6, number 34, with Suarez, Barbatus, and Farinacius; in this latter case, the wife is not obligated to follow the husband, nor is the husband obligated to take his wife with him, as Salmeron states, in the aforementioned book, chapter 1, paragraph 4, number 48, with Sanchez, Tollet, Bonaventure, Sayr, Fillon, etc. As the husband is not obligated to take her with him, even if he goes far away, if it would require great expenses to transport her there: Salmeron, ibid., with the aforementioned authors. Conversely, the wife is not obligated to follow the husband, if he wishes to lead her to sin, or if the wife, by leaving, would be exposed to a grave danger to her life, as Sanchez states, in book 4, title 44, number 5, with Sylvestri, Arminius, and Anglerius, etc., or to a grave detriment, as Bossuet states, chapter 6, number 38, with Layman, and (1) From the civil code, articles 302 and 303, the judgment of the judge is declared, regarding with which parent the children will be raised; as for

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expenses, these are common to both spouses, according to their means.

[*Latin ed. p. 154*]

Otherwise. Thus, a wife is not obligated to follow her husband who is wandering, unless the wife knew of this before the marriage, as stated by Sanchez, book 1, chapter 7, with Sylv. Ang. Nav. Lopez, Manual and Bossuet, number 48, and others generally agree. However, is a wife obligated to follow her husband who has been condemned to exile? It is probable that this should be affirmed, as stated by Sanchez, book 4, title 41, number 43, Bossuet, chapter 6, number 46, and others. See the aforementioned, book 4, number 353. CHAPTER III. Concerning impediments to marriage. 978. Some impediments are merely obstructive, while others are dispelling. 978. Can the Church establish impediments that are dispelling? 980. Who can establish them? Doubt 1. Can Bishops? 981. Question 2. Do impediments that are dispelling, when imposed by the Church, obligate the faithful? 978. — There are impediments of the genus of enticement: some render the marriage only illicit, while others, in addition, render the marriage invalid. The former are called obstructive, the latter are called dispelling. 979. — Our modern heretics do not doubt that the Church can establish impediments that obstruct marriage; however, they deny that it can establish impediments that are dispelling. But the Council of Trent, in session 84, chapter 4, states thus: If anyone should say that the Church could not establish impediments that are dispelling to marriage, or that it has erred in establishing them, let him be anathema (1). It does not contradict to say that the Church cannot add validity to sacraments instituted by Christ the Lord, when they are celebrated with the proper matter and form. For the reason is that the sacrament of marriage subsists in the contract itself; therefore, even if the Church cannot invalidate the sacrament, it can nevertheless... (1) Nor does the proposition LIX of the Synod of Pistoria, concerning the author of the faith, pertain to this. The doctrine of the synod asserts: That the supreme civil authority alone has the right to impose impediments of that kind on the original contract of marriage, which, in addition, render it invalid and are called dispelling; and that this original right is essentially connected with the right to dispense; adding, that, with the consent or constitution of the princes, the Church could justly establish impediments that are dispelling the very contract of marriage, as if the Church could not always, and does not always, in the marriages of Christians, establish impediments by its own right, which not only obstruct the marriage, but also render the bond null, by which Christians are bound even in lands of infidels, and in those lands dispense with them: Canon 3, 4, 9, 12, session 44 of the Council of Trent, is heretical. — The example is provided by the response given by the Sacred Penitentiary on June 1, 1826, to the Bishop of Viviers, which declares that the marriages of Christians are entirely valid, even if they are subject to civil impediments; and it further

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adds: This is derived from the instruction given by the Supreme Inquisition through the Congregation of the Council to the Bishop of Brexino in 1826: Marriages of the faithful, for which there is no canonical impediment, retain their marital bond, whatever impediments the secular authority may have established, without the Church's consultation or approval, and which are declared to be utterly and completely invalid.

[*Latin ed. p. 155*]

It is possible, though for the common spiritual good, that, by reason of the supreme authority he holds over the Christian people, the [Pope] can invalidate a contract, without which the sacrament cannot be perfected. 980. It is certain that the Supreme Pontiff possesses the power to declare impediments that prevent [a marriage] from taking place, and the General Council, with the authority of the same, confirms this. However, it is doubted: 1. whether Bishops also possess this power by virtue of their ordinary authority within their dioceses? According to natural law, Sanchez [Sanchiniano], book 7, title 4, paragraph 9; Pontedera [Pontedera], book 6, chapter 4, paragraph 12; Soto [Sotellus], Trullian Decrees, Bologna Concord, and others, cited by Salmeron [Salmeron], on Matrimony, chapter 11, question 4, paragraph 8, argue that Bishops can, within their dioceses, what the Pope can within the entire Church, unless the Pontiff expressly reserves something for himself, as Soto [Sotellus] states in *De Justitia*, book 10, part 4, article 3, at the end, in reference to Pontedera, book 6, chapter 4, number 12; Cabassola [Cabassola], *Tractatus de Jurisprudentia*, book 4, chapter 8, paragraph 6, with Panormitanus [Panormitanus] and Ja. Andreas [James Andrew], and Sanchez [Sanchiniano], on Matrimony, book 4, title 68, paragraph 3, with Abulafia [Abulafia], Arragone [Arragonia], Victor [Victor], Covarrubias [Covarrubias], Perez [Perez], Hurtado [Hurtado], Henrion [Henrion], Majol [Majol], Veracini [Veracini], and others; except for those matters pertaining to the status of the entire Church, as is the case with the dispensation of impediments. However, Suarez [Suarez], volume 5, title 7, section 4, paragraph 5; Lugat [Lugat], *Ratio Moralis*, book 4, title 45, and Salmeron [Salmeron], ibid., paragraph 9, with Cenovus [Cenovus], Dianus [Dianus], Perez [Perez], and Dicastus [Dicastus], argue that matters of the greatest importance cannot be decided except by the Supreme Authority. Furthermore, Sanchez [Sanchiniano] and Pontedera [Pontedera] themselves admit that, even if there is no law prohibiting Bishops from declaring impediments, it is nevertheless forbidden by long-standing custom. Moreover, Benedict XIV, in *De Synodo*, book 8, chapter 10, paragraph 2, states that Urban VIII approved a Declaration of the Holy See in which this was expressly forbidden, and furthermore, that the Pontiff ordered that this should not be brought up in doubt in the future. 981. Doubt 2. Do impediments declared by the Church bind non-believers? Answer: As with Sanchez [Sanchiniano], ibid., paragraph 3; Salmeron [Salmeron],

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ibid., paragraph 10; Becanus [Becanus], *Aversiones*, etc., only those non-believers who live in places temporarily subject to the Supreme Pontiff are bound, since they are universally subject to the laws of contracts there; otherwise, if they live elsewhere. DOUBT I. What are the impediments that are only impediments? 983 What makes a marriage illicit? I. The prohibition of the Church, namely, the prohibition by a Bishop, etc. 983 II. The time of holidays when solemnities, blessings, etc., are prohibited. 983 Doubt 1. Is it permissible to consummate [the marriage]? Doubt 2. Is it permissible to consummate before the blessing? 983 III. The Catechism. IV. Crime, namely, abduction, rape, seduction, etc. V. Betrothal. 986 VI. A vow of chastity, or of religious life. Doubt 1. Can a Bishop dispense with a vow of chastity made after marriage? 987 Reply 3. In the case of a marriage entered into through abduction, is the debt of marriage to be fulfilled? 8 And what?

[*Latin ed. p. 156*]

Can mendicants [religious beggars] do so? Question 3. Can bishops ever contract marriage? 388 It also impedes marriage, I. Through clandestine [secret] actions. II. Through the omission of the blessing. 898 III. Through the omission of announcements. 990 Question 1. Does the parish priest gravely sin if he omits these [announcements], knowing from elsewhere that there is no impediment? And what is said about the obligation to make announcements before marriage, the same is said after it. What if only one announcement is omitted? 991 Question 2. Are the announcements to be made in the church, and at Mass? Question 3. In which parish should they be made? 992 Question 4. On which feast days, and can they ever be made on weekdays? 998 When should they be repeated? 994 Concerning the obligation to announce impediments. 995 Question 1. Is one obligated to announce an impediment if one cannot prove it? 996 Question 2. Does one witness of an impediment prevent the marriage? 997 What is required, so that such a witness prevents the marriage? 998 Question 3. Is one witness sufficient, if betrothal vows have been exchanged? 999 Does a reputation [of impurity] prevent marriage? What if the judge has a private knowledge of a notorious reputation, before the impediment itself? 1000 Is the contracting party obligated to confess the impediment? 1001 What should the parish priest do when he knows of an impediment? 1002 Question 1. Is the parish priest obligated to prevent the marriage, if he alone knows of the impediment? Question 2. What if the Ordinary [bishop] alone is aware of the impediment? 1003 Who can dispense in these matters of announcements? 1004 Can the bishop, and for what reason? 1005 Reasons for which the bishop is obligated to dispense. 1006 Reasons for which he is not obligated, but may dispense. 1007 Question 1. Can the Vicar General dispense? Question 2. Can the parish priest ever dispense, or at least declare [that there is no impediment]? 982. — Answer. Besides mortal sin and excommunication, six things especially render marriage mortally illicit, namely: I.

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The prohibition by the Church; II. And also the time of weekdays; III. And the Catechism; IV. Crime; V. Betrothal; VI. Vow. They prevent the banns from being read, but allow the marriage to proceed. It is said I. Prohibition, that is, the prohibition of the Church, which is made by the bishop, or the parish priest, because of a doubt of some impediment, or of unfitness between those to be joined in marriage. See Bon. qu. 1. p. 14. n. 4. (And then the betrothed would sin gravely by contracting marriage; however, lightly, if the prohibition is because of reverence for some feast day. Salm. de matr. c. 43. p. unic. n. 4.) 983. — a It is said II. The time of weekdays, which, according to the Council of Trent, Session 14, chapter 40, on reform, now begins from the First Sunday of Advent until the Feast of the Epiphany, inclusive; and from the day of Ash Wednesday until the octave of Easter, inclusive. During this time, the contract itself, nor its consummation, is not prohibited, but only the solemnities of marriage, such as the blessing of the marriage, the solemn bringing of the bride into the groom's house, more solemn feasts, and celebrations, etc. (But these are not gravely sinful; unless there is great excess. Indeed, if they are done moderately, there will be no fault, as Sanch. says.)

[*Latin ed. p. 157*]

l. 7. d. 7. n. 48.) • Neither does the Council of Trent, in Session 24, chapter 1, prohibit the consummation of marriage before the blessing, but only urges that it not be done. See Bon., l. c.; Sanch., l. 7. d. 7. Con., d. 30; Fill., t. 40, p. 2, c. 9; M. Per., d. 43, s. 10, n. 7, 984. — Objection 1: Is it permissible to consummate the marriage during the holidays? Some Doctors of Theology deny this in 4. d. 32, art. 7, q. 4; Fagnan, in c. Capellanus, de Feriis, n. 6; also St. Antoninus and other canonists, as cited in Sanch., l. 7. d. 7. n. 21, and they argue from c. "Nec uxorem," caus. 33, q. 4, where the transfer of the wife is prohibited at that time; from which they infer that the use of marriage is also prohibited, because the transfer is prohibited for this reason. But it is more accurate, as Sanch., l. c., n. 23; Pontif., l. 6, c. 8, n. 9; Bellarmine, l. 4, de matr., c. 31, ad fin.; and most Holy Fathers, including St. Pius Benedict XIV, Notif., 80, n. 17, with Digna, Croia, Bon, Pignatelli, Perez, Fill., Monac., and others; and this is confirmed by a certain decree of the Sacred Congregation, dated June 10, 1684, in which it was stated that the transfer of the bride to the groom's house is permitted during prohibited times, provided that it is done without solemnities. And the reason, as the aforementioned St. Pius Benedict says, is that certain obligations should not be imposed where there is no manifest law prescribing them. To the canons that are opposed, the same Pontiff responds that they are matters of counsel, not of precept. From this, Van Espen criticizes the canonists who, too attached to the rigorous expressions of the ancient canons, have reduced to a precept what was rather a matter of counsel. Objection 2: Is it permissible to consummate the marriage before the priestly blessing?

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Many deny this, some of whom say that it is only venial, such as Cajetan, Soto, Covarrubias, Leander, etc., as cited in Bossuet, de matr., t. 4, c. 9, n. 44. Others hold that it is mortal, as the Council of Trent, p. 302, n. 46; Paludanus, William; and Rosell, as cited in Escobar, l. 25, n. 238; and St. Antoninus, 3, p., tit. 4, c. 46, § 1, who believes that the spouses sin mortally each time they cohabit. They argue this from several canons, which Sanch., l. 3, d. 42, n. 1, cites. However, it is more probable, and more commonly held, that there is no sin (Navarre, Man., c. 22, n. 83; Pontif., l. 5, c. 2, n. 3; Layman, c. 4, n. 42; Salm., de matr., c. 8, p. 6, n. 80; Viva, qu. 4, art. 4, n. 6; Paladan, p. 43, § 5, n. 8, with Council of Trent and Leander; Escobar, n. 943, with Villalobos and Ochagavia; Sanch., l. c., n. 7, with Palacios, Veracrux, Philiarch, etc.; Bossuet, l. c., n. 42, with Bellarmine, Barbatus, Guttieri, Fillon, etc.). The same is taught by St. Pius Benedict in the aforementioned Notif., 80, n. 17. This is proven by 4. from c. "Nostrates," caus. 30, qu. 5, where it is expressly stated that there is no sin, with these words: "And thus they receive the blessing, and the heavenly veil." But we do not say that it is a sin if these things do not occur in the marriage covenant. This is proven by 2. the Council of Trent, Session 24, chapter 1, where: "Furthermore, the same Holy Synod urges that spouses, before receiving the priestly blessing in the temple, do not cohabit in the same house." For the word "urges" clearly denotes that the Council considers this to be a matter of counsel, not of precept. And the same.

[*Latin ed. p. 158*]

It is stated in the Roman Ritual concerning Matrimony: "The parish priest should warn the spouses that, before receiving the sacerdotal blessing in the church, they should not cohabit in the same house, nor should they consummate the marriage. It is clear that this warning does not constitute a precept. However, it is generally agreed that the absolute omission of the blessing will not excuse [the spouses] from at least a venial sin. See the aforementioned [section] number 988. See also section 985."

It is said in the Third Catechism: "That impediment is removed by the one who answers for the infant, when the ceremonies are performed after baptism has been administered in necessity."

(However, it is said in Salmerón, *Tractatus de Matrimonio*, chapter 43, page 1, number 3, that the Catechism is that profession of faith which is made before baptism in the name of baptism. But this impediment is more likely to have been removed by the Council of Trent, as Salmerón, *loc. cit.*, states with Palafox, etc. And thus, it has been decided, as Diana, page 3, of the *Sacramentorum Rerum*, section 26, reports from the Sacred Congregation.)

However, it appears to have been removed by the Council of Trent, according to Sánchez, Fagius, and Concilio, who therefore advise parish priests to distinguish between the godparents of the Catechism and the

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godparents of baptism in the book. See Bonaventure, *loc. cit.*

It is said that the following constitute impediments: 1. Incest, namely, carnal intercourse with a relative in the first or second degree, knowingly committed (which prevents marriage with any other person; see Perez, *De Matrimonio*, section 23, number 5), or with one's own mother or daughter. 2. Abduction of another's betrothed. 3. Adultery. 4. Violation of the priesthood. 5. Acceptance of one's own child, born of baptism, in order to prevent the fulfillment of an obligation. 6. Public penance, as long as it lasts. 7. Marriage with a nun. However, these impediments are removed by dispensation, as stated in Layman, chapter 45, from Navarret; Sánchez, book 7, section 47, canon 30, canon 3, canon 3.

(Thus also the Council, page 342, number 45, and Salmerón, *De Matrimonio*, chapter 43, page 1, number 45, with Sánchez and the common opinion, except for vows, interdicts, and betrothals. The bishop alone can grant a dispensation in the case of an interdict. See Salmerón, *loc. cit.*, number 46.)

It is said that the following constitute impediments: 5. Betrothal, namely, when one has contracted a betrothal and it has not been dissolved. See Sánchez, book 7, section 47, canon 30, canon 3. See also Fagius, Concilio, and Bonaventure, *loc. cit.*, number 5.

It is said that the following constitute impediments: 6. A vow, namely, a simple vow of chastity, of religion, or not to marry. See Sánchez, book 7, section 43; Regius, book 34, chapter 24, number 184; Bonaventure, *loc. cit.*, number 7. It should be noted that an absolute vow of religion or chastity cannot be dispensed by the bishop before marriage; however, if it is a conditional or penal vow, as stated in book 4, number 260, question 3. But it is doubtful whether the bishop can dispense in the case of a vow of chastity made by spouses after the consummation of marriage? Answer: Affirmatively, as stated in St. Antoninus, book 3, part 1, chapter 24, section 2, at the end; Palafox, page 4, number 16; Bonaventure, page 45, number 5; Sánchez, book 8, section 44, numbers 3 and 4; and there, Arregui, Manrique de Araujo, and Guiterez, and Salmerón, *Tractatus de Matrimonio*, chapter 14, page 4, number 43, and there, Aversa and Cornejo, against Lopez, and others. The reason is that this vow is not of all kinds of chastity, since it cannot obligate one to not fulfill an obligation, unless...

[*Latin ed. p. 159*]

(Sanch. n. 4.) This dispensation must be granted before the vow is fulfilled, with the intention of entering religion. However, Salm. l. c. at the end, and the General Vicar of the Bishop, also, can dispense in such a vow, by a general concession which he has for all ecclesiastical cases. Nevertheless, only the Pope can dispense in the vow of chastity made by married couples, by mutual consent, as commonly taught by Sanch. Spor. Anacl. etc., as found in Ferraris' Biblical Encyclopedia, v. Debitum conj. n. 4, 987.

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— Doubt 2: Can the Bishop dispense in a vow of chastity made before marriage, in order to fulfill a debt? Less. l. 2. c. 40. n. 426, and Cajetan, Sylv. Tol. and Led. apud Sanch. l. 8. d. 12. n. 2, deny this, unless there is a necessity, such as the danger of incontinence. But, more commonly, and with strong probability, Sanch. n. 4, along with St. Antoninus, Valerius, Vega, Henry, and many others, as well as Elbel p. 382. n. 71, Tamb. de voto c. 47. §. 4. n. 54, the author of the book "Istruz. per li nov. conf." p. 2. c. 45. n. 34, Barb. all. 37. n. 9, with Sayr, Gutt. and Sylv. in "D. Th." and "Conc." t. 40. p. 344, in the beginning, with Nav. and Henry, affirm this. The reason is that the law of reservations is for edification; it would be for destruction if the Pontiff wished to reserve such a dispensation for himself, with so much danger as commonly exists. Furthermore, (as Sanch. says), this power to dispense is granted to Bishops by custom, which provides jurisdiction from the competent forum.

Can confessors who are mendicants dispense in this vow? Commonly, Pal. d. 4. p. ult. §. 4. n. 48, Wigandt tr. 46. n. 460, resp. 3, Sanch. l. 8. d. 16. n. 3, along with Cordura, Veracri, Palac. Manuel, and Henry, "Cont. Tourn." tr. de dispens. in spec. part. 4. cap. 17. art. 3. reg. 4, along with Suar. and Laym. and Salm. de matr. c. 14. p. 4. n. 14, along with Gutt. Candido, Diana, and Aversa, affirm this. And this is by virtue of the privileges of many Popes, which we will mention below in n. 4428, and especially by the force of the living oracle of St. Pius V. Pontius l. 8. c. 20. n. 12, also admits this, when the vow of chastity has been made before marriage; but he denies it if it is made after the marriage has been contracted, because, as he says (and Manuel and Vega, apud Sanch. n. 5, say the same), the privilege of St. Pius speaks only of the dispensation of a vow made before marriage. However, Sanch. and Salm. l. c. more correctly admit this even for a vow made after marriage, because, although, by virtue of the privilege of St. Pius, Regulars cannot dispense, they can nevertheless, by virtue of other privileges, exercise the power to dispense in all vows in which Bishops can dispense by ordinary right, as is undoubtedly the case with Bishops in this vow, when such a vow is not of perfect chastity; see what is said above in n. 4428.

Can Regulars dispense in an impediment of affinity in order to fulfill a debt? See what is said above in n. 4076.

Furthermore, Doubt 3: Can a Bishop, in a case of urgent necessity and danger of incontinence?

[*Latin ed. p. 160*]

Can a priest, in cases of necessity, dispense with the vow of chastity in order to allow someone to enter into marriage? Answer: Affirmative; see the statements in book 4, chapter 258. Note II. And so hold Sanchez, Decrees, book 4, chapter 40, paragraph 34, along with Suarez, Led. etc.; also Salm, on vows, chapter 3, page 14, paragraph 97, and Lessius, book 2, chapter 40, paragraph 127, along with Navarrus, Soto, and Sylvander,

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provided that there is danger in the delay, and access to the Pope is not easy. Furthermore, before marriage, the Bishop, except for the vow of chastity and any existing betrothal, can universally grant a dispensation in other impediments, just as he can in all impediments that arise concerning the marriage itself. Croix and Salm, on marriage, chapter 46, page 4, paragraph 43, along with Palafox, Bona, etc. See the statements in paragraph 1426: 988. - "I said, primarily, because, besides the aforementioned three impediments, there are others: First, there is clandestine marriage: although a marriage contracted clandestinely may be valid where the Council of Trent is not accepted, it is not licit under pain of mortal sin. Where the Council of Trent is accepted, at least with regard to the matter of marriage, it is invalid, as will be explained in the following question. Second, the absence of the blessing (1): because without this, although the marriage is valid, it is contracted illicitly; at least initially, as is taught by Bonaventure in chapter 3 of the Sentences, and in the Sponsus, cause 30, question 5. Bonaventure, question 4, page 6, number 2; Sanchez, book 7, title 82; Salmeron, Henry, Fillon, etc., who nevertheless concede that it is not a mortal sin. "(As the commentators teach, Sanchez, book 7, title 82, paragraph 9; Bossuet, volume 4, book 9, chapter 9, paragraph 9; Mazzella, volume 4, page 195, number 3, along with the common opinion; and Escobar, paragraph 619, along with Soto, Salmeron, Hurtado, etc.) "Understand this, speaking in general terms, because, by accident, due to a particular precept, scandal, or contempt, it can be a mortal sin; as Peraza teaches, book 43, section 10, paragraph 4, that if someone omits the blessing, acting as if it were a vain, trivial, or childish thing, it can be a mortal sin. I said primarily: because second marriages are not blessed unless the first marriages have been blessed. But if one of the spouses is a widower, and the other is celebrating their first marriage, or has never been blessed, although it was not permitted by ancient law, now, in some places, custom holds that they are blessed; as can be seen in Bonaventure, book cited. It must be done in the church by the proper pastor, and if anyone does it without his permission, he remains suspended by that very act, until he is absolved by the Ordinary from whom the blessing was to be received. 989. - "Third, if a marriage is contracted without the previous proclamations, without which, although it may be valid, it is not licit under pain of mortal sin, as the common opinion holds (although Sanchez, book 3, title 5, paragraph 7, Gasparis and Hurtado, title 5, paragraph 59, believe that omitting one proclamation is not a mortal sin, when it is certain that there is no moral impediment; but Peraza teaches the contrary, book 42, section 4, paragraph 7, citing Con and Pontius) unless the Bishop, or (1) The blessing, which is given by the pastor, or by a priest with his permission, in a Mass specially designated

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for this purpose for the first marriage. Hom. Ap. tr. 18, n. 53. Edit.

[*Latin ed. p. 161*]

His Vicar shall dispense, as is evident from the Council of Trent (Trid.), session 24, chapter 1, which prescribes the following regarding them: 1. That they be performed in the Church, during the solemnities of Mass. They can also be performed in a chapel, or near the Church, or in another place, provided a large gathering of people is present. 2. That they be performed by the proper parish priest, or another priest with his permission. 3. That they be performed in the parish where both parties reside, as the Congregation has declared. 4. That they be performed on three festive days, not immediately consecutive, but continuous, that is, on days that follow one another without any intervening festive day. See Bonaventure, question 2, page 6, number 990.

Several doubts arise here. It is doubted 1. whether the parish priest sins mortally if he officiates at a marriage, omitting the required announcements, without a dispensation from the Bishop, when he has already diligently ascertained that no impediment exists. Sotos, Machad, and Led, as cited by Sanchez, book 3, chapter 5, number 3, deny this, arguing that when the adequate purpose of the law ceases, the law itself ceases. However, Sanchez, number 6; Pontius, book 5, chapter 30, number 3; Bonaventure, page 6, number 7; Escobar, number 547; Bossuet, volume 1, chapter 8, numbers 3 and 14; Barbatus, all 32, number 2; Roncaglia, page 453, question 1, rule 1; and Salm, on marriage, chapter 8, page 6, number 77, along with many others, commonly and more truthfully affirm the contrary. The reason is that, even if the parish priest fulfills the purpose prescribed by the Council of Trent, he nevertheless transgresses the form of diligence that the Council prescribes; and since this form is of the highest importance, he is not excused from mortal sin unless there is a pressing necessity that does not allow for delay; furthermore, he does not adequately fulfill the purpose of the precept of announcements, because the diligence of the parish priest does not sufficiently compensate for the effect of the announcements in preventing evils that might otherwise occur; and finally, if the announcements are neglected, and an impediment subsequently arises, the children are considered illegitimate, even if the contracting parties were unaware of the impediment, as is stated in the canon beginning with "Si quis de clandestinis desponsationibus..." If the announcements had been made, the children would be considered legitimate, as is stated in the canon beginning with "Ex tenore."

Furthermore, in the Council of Trent, session 24, chapter 5, in the case of parties who have not made announcements, there is hope of obtaining a dispensation from an impediment, such as consanguinity or affinity (but not from public dishonor, as declared by the Holy See, as reported by Bossuet, number 27).

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What is said about making announcements before marriage also applies to the obligation of making them after the marriage has been contracted but before its consummation; this is correctly taught by Sanchez, book 3, chapter 41, number 5; Pontius, book 10, chapter 4, number 2; Salm, ibid., page 7, number 94; Palafox, page 3, section 5, number 6; Escobar, number 612, along with Paludanus, Trullius, and Villalobos, and Bossuet, chapter 8, number 6, along with Navarrius, Layman, and Conciliarius; Bonaventure, Regulations, Diana, etc. (contrary to Dicet and Led). Because the Council, according to the text cited above, equally prescribes that announcements be made before marriage, as well as afterward, before its consummation. And Pontius, Palafox, Bossuet, number 7, Sanchez, number 5, along with Navarrius, Manes, and Escobar, number 614, along with Conciliarius, Trullius, and Leander (contrary to Henricus), teach that spouses who consummate their marriage before the announcements are made, do so repeatedly.

[*Latin ed. p. 162*]

To sin gravely, whenever they are joined together, because they are joined together with the same danger of fornication; therefore, it seems to me that the opposite should be said, if they were certain that there was no impediment, because, having already violated the precept of Trent by consummation, it no longer matters. But is it mortal to omit one announcement? The Pont. loc. cit. and Pal. Con. and Leand. apud Escob. n. 549 affirm this. But Sanch. n. 7, Boss. l. c., and Escob. n. 550, with Fill., Barb., Gutt., Led., Diana, Veracr., and Vill., probably deny it, because, with respect to the entire precept, it does not seem to be a grave matter. Indeed, Salm. de matr. c. 8. p. 6. n. 78, with Trull. Reb. and others, believes that it is not even mortal if two announcements are omitted; but this is probably contradicted by P. Conc. p. 298. n. 4, 991.

Dubit. 2. Do the announcements need to be made in the Church, and during the solemnities of Mass? Indeed, this is prescribed in Trident. sess. 24. cap. 1, and in the parochial or conventual Mass, at the discretion of the parish priest, even against the will of the chapter, as declared by S. C. See Zachar. ap. Croic. l. 6. p. 3. n. 474. But Sanch. l. 3. d. 3. n. 9, Barb. all. 42. n. 45, and Ronc. p. 163. q. 1. r. 2, probably say that they can also be made in the Church during a concion or procession. Indeed, Wigandt tr. 16. n. 96, v. Quid. Sanch. l. c. Laym. c. 4. num. 20, Barb. in c. l. Trid. n. 24, Boss. c. 7. n. 43, Escob. n. 558, with Fill., Vill., Dian., Trull., etc. (contra Pont. l. c. n. 6, and Huri. Led. Possev.), say that they can be made outside the Church in a place of great gathering, because in this way the purpose of the council is already achieved. And this seems probable, at least without mortal sin, and if there is any reason, without any fault. Boss. c. 7. n. 99, with Marchino, notes that during a plague, if the announcements cannot be made in the Church, and the betrothed cannot be induced to postpone the marriage, then the Bishop can either allow the announcements to be made by the voice of a herald, or

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by edicts affixed in a public place, and this on any day; or he can dispense with them, and he is even obliged to do so if necessity demands, according to the aforementioned n. 1005. If the Bishop cannot be reached, the parish priest can, for a just and urgent reason, properly join the betrothed after he has been certain that no impediment exists.

Dubit. 3. In which parish should the announcements be made? It is certain that they must be made in the parish of each of the contracting parties, as commonly stated with Busemb. Sanch. lib. 3. d. 6. n. 4, Laymann. c. 4. n. 9, Pal. n. 18, 3, 3. n. 2, and others throughout; because this is the custom. Laym. c. 4. n. 10, Boss. cap. 7. n. 18, and Salm. de matrim. c. 8. p. 6. n. 72, with Dicast., except, if the parishes were very close. But it is doubtful whether the announcements must be made if one of the betrothed is staying briefly in another place? Pont. l. 5. c. 30. n. 5, believes that it is sufficient if they are made in the place where he actually resides. But Sanch. n. 6, Con. d. 2. n., is far more probable.

[*Latin ed. p. 163*]

86. Barbos, *all.* 32, no. 41; Ronc., p. 153, q. 4, r. 3; and Escob., no. 556, citing Gutt., Henr., Reg., Ochag., etc., from a declaration of the Sacred Congregation, state that the banns must be published in the parish from which the party departed, because the announcements are made to reveal any impediments, and therefore they must be made where the parties have resided for a longer period. And it should be noted that if one of the parties is from outside the parish, the pastor is not obligated to publish the banns unless he has first proven, through authentic testimony, the party's freedom from impediment before the Ordinary, as is stated in the Instruction of the Sacred Congregation, which is followed by General [citation] at the end of the treatise on marriage, volume 5, and by Pitton, on marriage, no. 4734. Furthermore, the Sacred Congregation has repeatedly declared that the banns must be published in the place of origin, as reported by Croia, book 6, p. 3, no. 476. Regarding those who are vagrant, the Council of Trent, session 24, canon 7, directs that pastors should not assist at their marriages unless, after a diligent inquiry has been made, and they have first obtained permission from the Ordinary to assist. Therefore, Ronc., p. 168, q. 4, at the end, rightly says that the pastor would sin gravely if he did not observe this precept, even if the marriage were valid, since the Council has not imposed any invalidating condition. See other things to be said about vagrants, nos. 4089, 992.

– Question: On what days can the banns be published? In the Council of Trent, session 24, canon 4, it is prescribed that they be published on three consecutive festive days. Practice indicates (as Ronc. says, p. 153, q. 4, r. 2) that the banns are published on three consecutive festive days, but that no other festive days should intervene, but not on immediately consecutive days (namely, the three festive days of Easter), as Ronc. and Barbos, *all.*

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32, Sanch., book 3, title 6, no. 8, Pont., book 6, title 39, no. 8, and others believe, because with such a short period, the purpose of the Council would not be sufficiently fulfilled. And it is probably said by Salm., on marriage, title 8, p. 6, no. 75, with Trull., Hurt., Reg., Leahd., etc., that they can also be published on three immediately consecutive festive days, because in the Council it is said on consecutive festive days, and there is no exception that they should not be immediately consecutive. And so, Salm., book, title, with Trull., Aversa, and Leand. (they also cite Bon. Con. and Dian., but not correctly, as we will soon see) say that the banns can be published on three non-consecutive festive days, provided that more festive days do not intervene, because in this way the intention of the Council is sufficiently fulfilled. But it is truer, according to Sanch., book 3, title 5, no. 8, Pet., p. 13, § 3, no. 4, Bon., p. 6, no. 49, and Escob., no. 508, with Con. Vill., Dian., Machad., and Reg., that this is not a mortal sin against Henry [citation], because it does not seem to be a grave transgression; but one is not excused from the venial sin, because one has already transgressed the prescription of the Council. But can the banns be published on weekdays, if, for some reason, there was a large gathering in the church? Pont., book 5, chapter 30, no. 7, and Pill., Leand., Hurt., etc., apud Escob., no. 560, from a declaration of the Sacred Congregation, deny this. But it is probably affirmed by Sanch., book 3, title 6, no. 40, Bonac., p. 6, no. 40, Barbos., *alleg.* 32, no. 45, Boss., chapter 7, no. 6, with Laym., Reg., and Possev., and Escob., no. 562, with Ochag., Reg., and Gutt., from another contrary declaration of the Sacred Congregation apud Ochag., because in this way the purpose of the Council is sufficiently fulfilled. At least, pro-

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It is possible for this to be done without grave fault, as we have said in n. 994, concerning denunciations made outside the Church in a place of great gathering (1). 993. — "1. It is permissible to contract immediately after the final proclamation, even on the same day; however, it is not permissible to delay beyond 4 months, within which time, if a contract is not entered into, the denunciations must be repeated, as declared by the Council in session 24, chapter 1, on reforms." (And Salm. de matr. c. 8. p. 6. n. 75. in fin. with Pontium, and Leand.) "Indeed, the Roman Ritual allows only two months, within which time, if a contract is not entered into, it commands that the denunciations be repeated, unless it appears otherwise to the Bishop (2). 994. — "2. After the proclamations, he who knows of an impediment is bound under pain of mortal sin to immediately denounce it, even if it was a secret, in order to prevent grave evils, e.g., incest, sacrilege, etc. However, if another person would thereby be exposed to the danger of infamy, that person should first be warned out of charity, so that he may desist from the marriage. Sanch. l. 3. d. 43. Fag. p. 2. l. 6. c. 5. Henr. Laym. l. 3. tr. 3. p. 2. c. 4. n. 8. etc. commun. contra Pontium, d. 5. q. 6. which denies that one is

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bound to denounce if it is hidden. Likewise, Mart. Perez d. 43. s. 6. n. 4. and seq., but with this limitation, if one has only heard it and does not know from whom, or if a dispensation has been granted for the internal forum, or if one fears great scandal, or danger, or if one knows that the contracting parties are in good faith. It is certain that 1. if the impediment can be proven by witnesses, anyone who knows it is bound to denounce it, whether the impediment is diriment or impedient, even if it is hidden and scandalous, that is, if it has arisen from sin; thus Pal. p. 12. §. 6. n. 4. Pont. l. 5. c. 34. n. 3. Boss. t. 4. c. 7. n. 158. and Salm. ibid. p. 8. n. 95. with Trull. Av. Dic. and commun. For everyone is bound to manifest the hidden sin of another which is harmful to a third, when the prelate legitimately commands it, as the Bishop commands when imposing (during the proclamations) on all who are aware of any impediment, to reveal it. And those who know of an impediment under a natural secret, and even under an oath of non-disclosure, are also bound to reveal it, as say Sanch. l. 3. d. 46. n. 6. Escob. n. 622. with Pal. and Card. Boss. n. 176. with Barb. and Fag. and Salm. ibid. n. 99. with others, from D. Th. 2. 2. q. 33. art. 8. ad 4. where he teaches that a promise and an oath do not obligate, when a damage to the community, or to a third person, is imminent, as in our case, where damage threatens both. However, the aforementioned authors warn that before a denunciation is made, fraternal correction should be given, and even repeatedly, unless (1) Cod. Civ. art. 63. prescribes two proclamations to be made on two immediately following Sundays, and art. 64. requires that an example be attached to the communal notices and remain in place for the entire week; it also prohibits proceeding with the civil act before the third day from the second proclamation. (2) According to Cod. Civ. art. 65, the proclamations must be repeated if a contract is not celebrated within one year from the last civil proclamation. Edit.

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It is probable that it will not be beneficial; provided that there is no delay in the matter. It is certain 2. that if the impediment is hidden, and a dispensation has already been granted concerning it within the internal forum, the person knowing it is not obligated to denounce it; otherwise, if there is public knowledge of the impediment, and the dispensation is hidden, as Sanchez states in book 3, title 14, number 4; Bossuet, number 167; and Palafox, book 1, chapter 1, number 2. It is certain 3. that if you know of an impediment by hearsay, but do not remember from whom, or if you received the information from an unreliable person, you are not obligated to denounce it; Sanchez, number 7; Pontius, number 1; Palafox, number 3, with Guttierrez and Farinacci, and Bossuet, number 164 and 166, with Navarret, Concerning Good Marriages, Fillon, Cordes, and Hurtado, 995. However, it is doubtful 4. Whether, if you alone know of the impediment, and cannot prove it, you are obligated to denounce it? The first opinion,

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held by Pontius in book 5, chapter 34, number 6; Diana Veteranorum, 3, page 3, part 4, number 224; and Sanchez, Major, and Gabrel, apud Salm, on marriage, chapter 8, page 8, number 97, states that one is not obligated to denounce an impediment that cannot be proven, arguing as follows: Either the spouses are in good faith, or in bad faith; if in good faith, they do not sin by entering into marriage; if in bad faith, it will be of no benefit, since the testimony of one person is not sufficient to prevent a marriage. The second opinion, which is more common and truer, affirms that one is obligated to denounce it, if it can be done conveniently, and is held by Sanchez, book 3, title 43, number 2; Palafox, page 12, section 6, number 5, with Hurtado, Concerning Henry, Covarrubias, and Escobar, book 25, number 625, with Laym, Barb, Fag, Arrag, and Lop; Bossuet, number 173, with Fillon and Rega, and Salm, cited, number 97, with Diccionario Trullano, Leander, etc. The reason is that, if the spouses are in bad faith, the revelation will be beneficial in avoiding sin, since the testimony of one person about an impediment is sufficient to prevent a marriage, as we have said in number 878, and we will soon demonstrate more fully in the following question. If, however, the spouses are in good faith, it will at least serve to repair the material injury to the sacrament. We have said, if it can be done conveniently, for if it would cause you serious harm, or scandal to others, you are not obligated to denounce it, since neither ecclesiastical law, nor the precept of correction, obliges if it would cause serious harm or scandal to others. 996. Question 2. Is one witness about an impediment sufficient for the Bishop to prohibit the marriage? There are four opinions. The first opinion, held by Pontius in book 5, chapter 34, numbers 8 and 9, and chapter 36, number 2, and Diana Veteranorum, page 3, part 4, number 12, states that it is sufficient if the impediment arose from a crime; but if it does not arise from sin, but from carnal or spiritual relationship, two reliable witnesses are required, unless there are other supporting elements that provide complete proof. The second opinion, completely opposed, held by La Croix in book 6, page 3, number 215, states that if the impediment is not due to a crime, one reliable witness is sufficient to prevent the marriage; but if it is due to a crime, at least two are required, because in that case, the rights of a third party are involved, against whom judgment cannot be passed without full proof.

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The third opinion, held by Conc. p. 204, n. 42, and Salm. de matr. o. 8, p. 8, n. 106, along with Trull. Die. Aversa, etc., states that one witness is sufficient, regardless of any impediment, provided that the witness is free from all exceptions and testifies based on certain knowledge.

The fourth opinion, which is the most common and truer one, held by Sanch. t. 4, d. 71, Panorm. in e. Super eo, de test. Nav. Man. c. 2, n. 83, Rone. p. 184, qu. 7, r. 1, Pal. p. 32, n. 8, op. Con. Covarr. et Mascard. ao Boss. t. 1, c.

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7, n. 133, along with Host. Sylvest. Gutt. Farinac. Barb. Piaseo. Comit. Hurt. etc., teaches that one witness is sufficient to impede a marriage, even if that witness is not free from all exceptions; provided that the witness possesses the qualities explained below.

This is proven in two ways:

1. From o. Super eo 22, de test. et attest., where it is stated: "If the bride (understand, one of the parties) asserts that they are related by blood, they should not be joined in marriage, because the presumption is not insignificant that they are related by the line of consanguinity. However, if the marriage has already been consummated, it should not be dissolved without the oath of several witnesses."

2. From e. Praterea 42, de Spons., where, when a certain man wished to contract marriage, his relative asserted that he had coerced the bride, the Pope responded: "To prevent the marriage from taking place, unless an oath is taken, I strictly forbid it, lest something worse should result." From this passage, Sanch. n. 8, and 4, along with Mascard. and Alex. de Neva, ao Boss. n. 142, along with Panorm., Gutt., and others mentioned above, rightly infer that this procedure applies even if the witness is an accuser or informer, and even if that witness is a criminal, and even if they allege their own wickedness.

The reason for our opinion is that, although full proof is required when dealing with the prejudice of a third party, when dealing with the avoidance of danger to the soul, namely, if a marriage were to be contracted with an impediment, a lesser degree of proof is sufficient. However, as Sanch. n. 8, along with Panorm. and Boss. n. 155, along with Gutt., rightly state, contrary to Palud., if the matter concerns the prejudice of a third party, and not the avoidance of sin, such as if the witness alleged the fornication of the bride, or something similar, then full proof is certainly required, as stated in c. Licet, cap. Veniens and c. In omni, de test. et attest. 997.

Although, as we have said, it is not required that the witness be entirely blameless in order to impede a marriage, it is nevertheless required that:

I. The witness not only denounce the impediment, but also testify, and spontaneously offer themselves to testify, as stated by Sanch. dict. d. 71, n. 10, along with Alex. de Neva, and Boss. n. 146, along with Gutt. However, if such a witness were to prove the impediment by reputation alone, as those same authors state from c. Non in duo, de spons., then it is sufficient that they merely denounce the impediment, without testifying.

II. That they testify under oath; Rone. loc. cit. Sanch. n. 42, along with Host. Panorm. Palud. Præp. Lop. etc. Pal. p. 32, n. 4, along with Covar. and Gutt., ao Boss. n. 147, along with Coninck. Barbos. and Hurt., because in matters concerning the prejudice of a third party, the testimony of a witness

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is only believed if it is given under oath, as stated in c. Tua, de ocha.

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It is established by canon law that, unless it depends on hearsay, but on certain knowledge, as Roncag., loc. cit.; Sanchez, n. 12, with Abbot Cov., Praep.; Palafox, n. 4, with Conc., Gutt., and Bossuet, n. 284, with Navarre and Riccio. However, the aforementioned authors, and Salm., de Matr., c. 8, p. 8, n. 407, etc., make an exception. It is permissible, in the case of witnesses, unless there is an impediment of consanguinity or affinity; in that case, it suffices that the witness testifies that he heard it from two persons of good reputation, and especially from relatives of the betrothed, who are more suitable to prove or disprove the consanguinity, as Bossuet, n. 152, states, along with others. Finally, it is required that the witness not be a person of low status, unless the fact is so hidden that it cannot be proven except by a person of low status, because where there is no means of proving, evidence even from an insufficient source is admitted; thus, Palafox, loc. cit., with Menoch; Bossuet, n. 145, with Gutt.; and Sanchez, n. 13, with Panorm., and the common opinion, contrary to Goffred., 998.

Doubt 3: If the marriage has been promised by oath, is the testimony of a single witness stating the impediment sufficient to prevent the marriage? The Gloss in the decree *Præterea*, and Palafox, Henriq., Lop., etc., apud Sanchez, lib. 1, de 71, n. 9, deny this, because in the aforementioned text, *Præterea*, it is expressly stated that one witness is not sufficient if the marriage has been promised by oath. However, Sanchez, lib. cit., with Cov. and Verac., Palafox, p. 32, n. 6, with Gutt. and Masc., and Bossuet, c. 7, n. 146, with Heat., Praep., Hurt., etc., more plausibly affirm that, provided the witness is of good reputation and testifies from certain knowledge. The reason is that, if the reputation of an impediment is sufficient to dissolve a betrothal, as is held in the decree *Super eo*, de consanguinitate, then a credible witness, who proves more effectively than mere reputation, should all the more suffice. This is certain to all, as Palafox, n. 6, and Sanchez, lib. 2, de 45, n. 27, testify. To the contrary text in the cited *Præterea*, Panorm. in the decree *Super eo*, and Sanchez, Palafox, and Bossuet, etc., correctly respond that, in the case of the text mentioned, the witness was not entirely credible, both because he alleged his own wickedness, and because he did not testify in the form of testimony.

It should be noted here that the reputation of an impediment is sufficient to prevent a marriage, as expressed in the decree *Super eo*, de consanguinitate, unless the reputation is contradicted by the oath of relatives, as Sanchez, lib. 1, de 71, n. 48, and Palafox, p. 32, n. 7, with Abbot, Gutt., etc., state, from the decree *Cum in tuo*, de sponsal. Furthermore, Sanchez, lib. cit., adds that the oath of the contracting parties themselves is also valid against the reputation, at the discretion of the judge. However, Palafox, dict. n. 7, with Gutt. (contrary to Palafox), more plausibly states that, in

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order to prove the reputation, the witness must announce it under oath, whereas Sanchez admits (as stated above, n. 997, ad II) that a witness who is not under oath is not believed in court, when it concerns the prejudice of a third party. Furthermore, it should be noted that private knowledge of a reputation is not sufficient for a judge to prevent marriages, but only to inquire about the impediment; thus, Sanchez, n. 45, Palafox, loc. cit., with Gutt. and Bossuet, state in common.

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c. 7. n. 428. Concerning Innocent Barbatus and others. Can a judge impede a marriage if he knows that an impediment exists, but it is not publicly known? Palatius denies this, as does Guttadornus, stating that such a notoriety must be proven in court; otherwise, the knowledge would be private, and the judge would not be able to render a judgment. This opinion might seem plausible to some, given that a judge must judge according to what is alleged and proven, as stated in law 5, n. 208. However, I find the opinion more probable that is held by Sanchez, n. 16, with the Glossa on law 1, chapter "Qui ad quos," and by Bossuet, n. 427, with Barbatus, because otherwise, by pronouncing a sentence against the marriage, the judge would be cooperating in the consummation of a marriage that is intrinsically evil.

4000. — « 3. The contracting party, duly questioned about a hidden impediment, is bound to confess it, or to abstain from marriage, unless he receives a dispensation according to his conscience; in which case, he is not bound to confess, unless the judge has sufficient proof from another source. See Sanchez, Sylv. Laym., loc. cit., n. 10. See also Bonaventure, loc. cit.; Perez, d. 43, s. 7, n. 2. » (Thus, generally, Sanchez, l. 3, d. 14, n. 2; Pontius, l. 5, c. 33, n. 1; and Bossuet, c. 7, n. 482 and 188, with Laym. Con. Fill., etc. Concerning whether the betrothed are bound to confess an incestuous union, if the dispensation contains the clause: "Unless the union has been consummated?" See the aforementioned n. 4435.)

4001. — « 4. The parish priest, knowing of an impediment, is bound to prohibit the marriage and to refer the matter to the Bishop, or his Official, and he cannot assist [at the marriage]. Sanchez, l. 3, d. 15; Perez, d. 43, s. 7, n. 9, etc. » (with Salm, de matr., c. 8, p. 8, n. 403, and generally) « against » Pontius. Unless, however, he knows only from the confession; in that case, he could in no way deny the marriage, whether requested publicly or privately, nor could he admonish them about their duty outside of the confession; although he could and should do so in confession. And then, if they could not, without great scandal, abstain from marriage, and they do not wish to, he should advise them to contract the marriage with the common consent, under the condition that the Pope will grant a dispensation, intending to cohabit as brother and sister (not in the marital act) until a dispensation is obtained, and then to contract the marriage again. Thus,

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according to Beja and Pontius, l. 5, c. 35; Perez, loc. cit., who adds that if they absolutely refuse, and continue to request the marriage, the parish priest must assist them.

4002. Doubt 1. Whether a parish priest, if he alone knows of an impediment, is bound to publicly prevent a marriage that is requested? If the impediment is reported by others, it is certain, from the aforementioned chapter on clandestine dispensations, that the parish priest is bound to prohibit the marriage and to refer the matter to the Ordinary, so that he may become aware. The doubt arises whether, if only the parish priest knows of the impediment outside of a confession, he can and is bound to prevent the marriage? Pontius denies this, l. 5, c. 35, n. 5 and 6, for the same reason as stated above, n. 995, because no one is bound to denounce what he cannot prove. However, Sanchez, l. 3, d. 15, n. 44; Bossuet, c. 7, n. 193; and Rone, p. 154, q. 7, r. 2, affirm this more truly.

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Page 2, Paragraph 7, Number 3. Covino, Guttieri, and Escobar, number 628, with Henry Hurt, etc. The reason is that, as we have said (dict. number 995), anyone is obligated to reveal an impediment, even if he alone knows it; a fortiori, the parish priest is obligated, to whom it is incumbent by his office to care for the salvation of his flock. It does not object that, to a sinner who is secretly burdened with an impediment, and who publicly requests the sacrament, that sacrament should not be denied; for it is answered, with the aforementioned authorities, that this proceeds from the fact that the impediment, by itself, only renders the reception of the sacrament illicit; otherwise, if the impediment (apart from the reception of the sacrament) presents the occasion for other harms and faults.

Doubt 2: Is the Ordinary, who alone is aware of the impediment, obligated to prevent the marriage? Sanchez, book 3, chapter 15, number 14; Pontifical, book 5, chapter 35, number 5; and Page 12, Paragraph 7, Number 4, with Guttieri and others, hold that he is neither obligated nor able to do so, because no one can be both judge and witness. But it is more probable that the Council (page 304, number 11), Escobar (number 634), with Leander, Bonaventure (chapter 7, number 205), with the Council and Hurt, and Salmeron (on marriage, chapter 8, page 8, number 104), with Aversio, Trull, Dicast, etc., affirm this. The reason is that it is well possible for someone to be both judge and witness, when it is a question of preventing sin; and also, in this case, the Ordinary himself can at least present the impediment to a higher judge (and also to his Vicar, as Salmeron and the aforementioned authorities say, dict. number 104), so that the latter may pronounce judgment; and the Bishop is obligated to do this, in order to prevent sins that may arise from an invalid marriage.

403. — 5. The Bishop, or his Vicar, but not the rural dean, can grant a dispensation, or to make only one proclamation; or to make them after

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the marriage has been suddenly contracted before the parish priest and witnesses, before consummation; or even to completely omit them, if there is a just reason, such as, for example, fear that otherwise the marriage will be maliciously impeded, the modesty of the contracting parties, old age and instability, disparity of status, fear of scandal, infamy, incontinence, etc. Bonaventure, book cited, chapter 6. Although, when a marriage has been contracted by dispensation before the proclamations are made, the spouse is not obligated, nor should he render to the other what is due, before the proclamations have been made; however, if it is certain that there is no impediment, it is held by Soto, Ledo, and Texeira, against Sanchez, apud Dian, page 9, volume 8, reply 19, 7, that one does not commit mortal sin by consummating the marriage.

404. — Regarding the dispensation from the announcements, observe what is stated in the Council of Trent, session 24, chapter 4: "If, at times, there is a probable suspicion that a marriage can be maliciously impeded, if too many announcements precede it, then either only one announcement should be made, or..."

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Then, in the presence of the parish priest, and two or three witnesses, the marriage shall be celebrated. Afterwards, before its consummation, announcements shall be made in the Church, so that if any impediments exist, they may be more easily discovered: unless the Ordinary himself judges that the announcements should be dispensed with, which matter is left to his prudence and judgment.

Although the Council grants the Bishop the faculty of dispensing with the announcements, solely for the reason that it is feared that the marriage may be unjustly impeded, nevertheless, the Doctors commonly say that the Bishop can, and sometimes is obligated, to dispense with the announcements for other just causes; for although the Council assigned only one reason, it proposed it merely as an example, not as an exhaustive list; besides which, this matter was immediately afterwards left to the prudence of the Ordinary; thus, Sanchez, book 3, title 7, number 1; Pontius, book 5, chapter 32, number 4; Cabassol, book 3, chapter 20, number 2; Palafox, page 13, paragraph 4, number 8; Barbazon, all 32, number 27; Roncaglia, page 454, question 4, response 2; Conciliaria, page 300, number 7; Wigand, treatise 16, number 96; and Vico, Escobari, book 25, number 587; Salm, on marriage, chapter 8, page 7, number 89; and Bossuet, volume 4, chapter 7, number 84, with others (against Ceballe and Borrius), and thus the Holy See has declared on several occasions, as Escobari, number 586, and Bossuet, book and chapter, report, especially from Bellarmine, in the fourth chapter of the Council of Trent: "The announcements can be omitted not only for the reasons expressly stated here, but also for other reasons that are well considered by the Bishop, who can remit these announcements even after

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the marriage has been contracted, and before its consummation." Also, the Doctors commonly teach that if it is necessary to avoid a serious damage, whether common or private, spiritual or temporal, and if it is advantageous for a notable spiritual or temporal good of the community or of another private person, the Bishop not only can, but is also obligated, to dispense; thus, Sanchez, book 2, title 10, number 8; Pontius, book 2, number 6; Barbazon, number 51; Palafox, paragraph 5, number 4; Roncaglia, book and chapter, response 4, with Guttieri; Bossuet, number 403, with Conciliaria, Bonaventure, Fillon, and Hurtado. Therefore, the causes for which the Bishop is obligated to dispense are:

I. If there is a probable fear that the marriage will be maliciously impeded, according to the sense of the Council of Trent.

II. If the marriage is necessary to avoid damage, or infamy to the contracting parties, or to the offspring, namely, if they would be considered concubinaries if not married, or if one has already been defiled, and it is feared that the man will change his mind; also, if one of the betrothed were at the point of death, and there were legitimate children to be acknowledged; Sanchez, number 6; Bossuet, number 403; Roncaglia, book and chapter, with Barbazon.

III. If there is an imminent danger to the soul, body, or fortune; Sanchez and Roncaglia, books and chapters; Bossuet, number 93.

IV. If the betrothed is about to depart far away, and necessity urges the marriage for one of the reasons described above; Bossuet, number 90.

V. If the parents, or tutor, insist that...

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A virgin may be betrothed without a dispensation; Escob. n. 587. with Cajet. VI. Rone adds in his work, chapter 1, that if the time of Advent or Lent approaches, or if some other urgent danger of incontinence or grave harm is imminent. The reason for this seems to be that marriage cannot be consummated before the nuptial blessing; however, according to our opinion (n. 984), since there is no sin before the blessing, it is better to say that the Bishop can grant a dispensation for this reason, but he is not bound to do so, as Barb. states (all. 32, n. 48), citing Conc. Reg. Ugel. etc., and Boes. n. 87, with Sanch. Pont. Salzedo, and Hurt. Casterum. Hurt rightly says that the Bishop is bound to grant a dispensation for any other reason that appears to be urgent in the judgment of a prudent person.

4006. The reasons for which the Bishop is not bound, but can grant a dispensation, are: I. If the marriage is to take place between prominent individuals, for the marriages of such people are not entered into except with great consideration. II. If the betrothed are very young or very unequal in condition, age, wealth, or quality. III. If it is certainly and morally established that there is no impediment present; thus, Sanch. l. 3, d. 9, n. 3;

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Barb. all. 32, n. 41; Bon. q. 2, p. 6; Boss. n. 79; Pal. §. 5, n. 8; Pont. l. 5, e. 32, n. 6; Cabass. l. 3, c. 10, n. 3; Fill. tr. 40, c. 5; Salm. de matr. c. 8, p. 7, n. 89. Although not all of these authors express all of these reasons. Furthermore, Rone and Barb. and others note that the Bishop can grant a dispensation in the announcements even when one of the betrothed is not subject to him, just as he can join him in marriage, so too can he grant a dispensation. Roncaglia testifies to this custom, adding that prelates who have quasi-episcopal jurisdiction also have this power to grant dispensations. It should be noted, however, that the Bishop, when granting a dispensation in the announcements, is always bound to diligently inquire about impediments from other sources, unless it is commonly known that there are none present.

4007. Doubt 4: Can the Vicar General of the Bishop grant a dispensation in the announcements? Pont. l. 5, e. 34, n. 5; Dian. p. 5, t. 4, r. 263; and Gomez, Menos, and Henr. (apud Escob. n. 570) deny this, citing the Council of Toledo, the Council of Milan, and a declaration of the Holy See from the year 1594 (apud Henr.). However, Sanch. l. 3, d. 7, n. 40; Pal. p. 43, §. 4, n. 2; Bon. p. 6, n. 7; Wigandt tr. 46, n. 96; v. Dieo, Elb. p. 386, n. 81; Barb. all. 32, n. 29; Rone. p. 453, q. 3, r. 4 (who asserts, with Gutt. and Sperelli, that from ancient custom Vicars have always granted dispensations in this matter); and Escob. n. 572, with Nav. Con. Fill. Bord. and Hurt., affirm this more commonly and with greater probability, because the Vicar acts as one tribunal with the Bishop (Boss.). However, Boss. and Escob. doubt the authenticity of the aforementioned declaration of the Holy See.

Doubt 2: Can a parish priest ever grant a dispensation in the announcements? Vega, Marchant, Vivald, Led, and Veraer (apud Esc. n. 603) and others (apud Salm. ibid. n. 84) affirm this. N. 86 states that it is quite probable in the case (as they say) where necessity is urgent, and the Bishop cannot be reached.

[*Latin ed. p. 172*]

who, under other circumstances, would be held to grant a dispensation for some of the reasons described in n. 1006. However, it is more accurate, and generally accepted, that a parish priest cannot grant a dispensation (Sanch. l. 3. d. 7. n. 47; Pal. p. 43. §. 4. n. 3; Pont. l. 5. c. 4. n. 2; and Escob. n. 605, with Nav. Laym. Con. Vill. etc.). The reason is that, in truth, a parish priest has no jurisdiction in the external forum. However, it is very probable that Sanch. l. 3. d. 10. n. 15; Laym. c. 4. n. 44; Croica l. 3. p. 6. n. 494; Elbel p. 386. n. 82; and Ronc. p. 453. q. 3. r. 2, with Gob., state that even if a parish priest cannot grant a dispensation, in cases in which the Bishop is obligated to grant a dispensation, and the Bishop cannot be reached, and there is danger in the delay, he can declare that the precept of the proclamations does not apply, provided he is certain that there is no impediment present. Indeed, in such cases, Bus. supra n. 4003; Pont. l. 5. c. 32. n. 8; Boss. n. 408, with Hurt. Salm. de matr. c. 8. p. 7. n. 92, with Pal. Trull. Dic. Sanch. Con.

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Gutt. and Escob. n. 608, with Sot. Lop. Led. etc., hold that the betrothed themselves, if they are certain that they are not impeded, can enter into marriage without proclamations. However, Boss. n. 445 states that if, in such cases, the Bishop unjustly denies a dispensation, the betrothed are obligated to appeal to a higher judge; otherwise, they cannot contract the marriage, unless there is danger in the delay, and access to the higher judge is not possible. Finally, it should be noted that if anyone presumes that a marriage exists without proclamations, he incurs suspension from office for three years, according to the decree "Cum Inhibitio," §. "Sane," concerning clandestine dispensations, but this is subject to judgment.

QUESTION II. What are the impediments that dissolve marriage?

1008 The impediments that dissolve marriage are fifteen, namely: 4. Error, II. Condition, III. Vow, IV. Consanguinity, V. Crime, VI. Disparity of cult, VII. Force, VIII. Order, IX. Bond, X. Dishonor, XI. Age, XII. Affinity, XIII. If the woman is a clandestine or imposed marriage, XIV. and XV. If the woman has been taken away and not restored to her rightful guardian.

1009 I. Error of person.

1010 Concerning error regarding the person.

1011 Concerning error regarding the qualities of the person.

1012 Does an error regarding a quality invalidate the marriage, if it gave cause for the contract?

1013 There are three rules for determining when an error regarding a quality amounts to a substantial defect.

1014 First, if someone actually contracts under a condition of quality.

1015 Second, if the quality is proper to a particular person.

1016 Third, if the consent is given directly regarding the quality.

1017 II. Condition, namely, of servitude. More will be noted up to n. 1023.

1024 III. Solemn vow.

1023 Doubt 1. Does this dissolve marriage by divine or ecclesiastical law?

1023 Doubt 2. Can the Pope dispense in a solemn vow?

4037 IV. Consanguinity. And 1. concerning consanguinity by blood.

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1038 2. Concerning spiritual affinity. 1029 3. Concerning carnal affinity, and the rules for distinguishing degrees. 1030 The tree of consanguinity. 1031 V. Crime. The first crime is homicide. The second is adultery. 1032 The third is rape. 1033 The rule is assigned as follows: I. If both parties are guilty, namely, if only homicide is present. 1034 Whether it is required that the intention of marriage be made manifest to the other party. 1035 II. If one party is guilty, namely, if homicide is present with adultery. 1036 What is required to incur this impediment. 1037 III. If neither party is guilty, namely, if adultery is present without homicide. What is required to incur

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this impediment. 1038 Doubt 1. Whether the ease of adultery suffices for consent? 1039 Doubt 2. Whether a feigned promise introduces an impediment? 1040 Doubt 3. Whether a conditional promise introduces an impediment? 1041 Doubt 4. Whether, to incur the impediment, it is required that the promise be mutual? 1042 An impediment also arises from adultery with an attempted marriage while the spouse is living. 1043 He sins who, while his spouse is living, promises marriage to another. 1044 VI. Disparity of cult. What about marriage with heretics? 1045 VII. Force, or grave fear, unjustly inflicted, to extort marriage. 1046 In what does force differ from fear? And what is fear from within, and fear from without? 1047 What is required for grave fear? 1048 What evils constitute grave fear? 1049 What is required, so that fear may invalidate the marriage? 1050 Doubt 1. What if a judge unjustly condemns someone, and promises freedom if he takes his daughter? 1051 Doubt 2. What if the accused is justly condemned? 1052 Doubt 3. What if someone is innocent, but justly condemned according to the law? 1053 Doubt 4. What if a doctor refuses to treat, unless he takes his daughter? 1054 Doubt 5. Whether fear invalidates marriage by natural law, or by ecclesiastical law? 1055 Doubt 6. Whether fear invalidates a marriage *de jure divino*? 1056 Doubt 7. Whether fear is reverential? 1057 Doubt 8. Whether he who inflicts the fear can resist? 1058 VIII. Order. 1059 Does a secular order dissolve marriage by divine law? 1060 IX. Bond. 1061 X. Honor. This impediment does not arise from uncertain betrothals, nor from conditional ones. 1062 Question 1. Does it arise from a marriage that is null? 1063 Question 2. Does it arise from betrothals that have been justly dissolved? 1064 Question 5. Does it arise from a clandestine marriage? 1065 XI. Age. 1066 See more about the marriage of minors. 1067 Is there no marriage contracted if a boy, having completed his years, is unable to have intercourse? What about the marriage of the elderly? 1068 XII. Affinity. 1069 Concerning the impediment of affinity contracted before marriage. 1070 Concerning the impediment of not petitioning. 1071 Question 1. Does the wife, known through fear, have priority over the consanguineous husband in the right to petition? 1072 Question II. Does ignorance excuse from this impediment when entering into marriage? Firstly, if the ignorance is of the law. 1073 Secondly, if the ignorance is of the fact. 1074 Thirdly, if the ignorance is of the penalty.

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1078 Q. III. Is it required, in order to establish affinity, that the marriage be consummated?

1078 Q. IV. Who is able to grant a dispensation in this matter?

1077 Penalty for those contracting marriage with an impediment of affinity.

1078 XIII. Secret marriage.

1079 What if a parish priest cannot be found in a certain place?

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1080 Can travelers validly marry without a parish priest?

1081 Who is to be understood by the term "parish priest"?

1083 Can a parish priest who is excommunicated, or irregular, etc., perform the marriage?

1083 Doubt 1. Does a cleric who assists at such a marriage sin gravely?

1084 Doubt 2. Can such a parish priest grant permission to others?

1085 What kind of witnesses are sufficient?

1086 What if there are two parish priests? Or if the betrothed have two residences?

1087 Is a parish priest from either of the betrothed sufficient?

1088 Does a license presumed to be valid suffice for both the present and future?

1089 Concerning vagabonds.

1090 Concerning soldiers.

1091 Concerning travelers, those detained in prison, those living in the countryside, girls living in institutions, etc.

1092 Do betrothed validly marry before a parish priest who is present?

1093 Is it licit?

1094 In what way does a parish priest sin if he does not inquire about consanguinity, or does not say: "I join you together," etc.?

1095 XIV. Impotence. What kind of impotence dissolves a marriage?

1096 I. Concerning impotence arising from a curse.

II. Concerning frigidity.

III. Concerning disproportion of the organs.

1097 Doubt 1. Is a marriage valid if a woman can become pregnant with the risk of a grave illness, but not of death?

1098 Doubt II. If a marriage is dissolved because of a woman's strictness, if afterwards, through intercourse with a second man, she proves to be suitable for the first, is she obligated to return to the first?

1099 Doubt III. Is a woman obligated to undergo an operation?

1100 Doubt IV. Is she obligated to undergo an operation to restore her virginity, if she is a virgin?

1101 What should be done if the impotence is certain?

1102 What if it is doubtful, and the doubt precedes the marriage?

1103 What if the doubt arises afterwards?

1104 What should be considered if there is doubt whether the marriage was consummated, or whether the impotence existed?

1105 What should be thought of marriages contracted in territories of heretics?

1106 XV. Abduction.

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1107 In order to incur the impediment of abduction, it is required that the woman be abducted I. from her place of residence; II. during the celebration of the marriage; III. unwillingly.

1108 What if a man abducts a woman with whom he had contracted betrothal?

4008. — "Besides the lack of consent, of which above, chapter 2," d. 4. are those which are contained in the following verses: I. Error, II. Condition, III. Vow, IV. Consanguinity, V. Crime, VI. Disparity of cult, VII. Force, VIII. Order, IX. Bond, X. Honor, XI. Age, XII. Affinity. XIII. if the marriage is clandestine, XIV. and impotent, XV. if the woman is abducted, and not returned to her safety; These are impediments that render marriages invalid, and those who enter into them do so invalidly.

4009. — "It is said that 4. Error, namely of person, which dissolves by natural law," v. g. if Cajo, wishing to marry Anne, offers himself to Mary, with whom, thinking that...

[*Latin ed. p. 175*]

To marry someone believing them to be Anne, when they are not, is invalid; for error removes liberty, and the consent required by natural law for a contract is lacking. I said "person," because an error concerning the qualities, or the condition of the person (excluding servitude), does not invalidate marriage, as, for example, if someone believes a person to be noble, a virgin, wealthy, etc., whom they wish to marry, and they are not so; for this error does not remove consent regarding the person, and the matter of the contract. However, it would be different if one absolutely refused to consent to the marriage unless the other person possessed a certain quality, or if that quality, according to the intention of the contracting party, passed into the condition of the person; as, for example, if someone wished to marry the eldest daughter of the king, and no other, and yet another was substituted, the contract would not be valid. *Bonifacius, q. 3, p. 2; Scotius, Sententiae, l. 7, d. 48; Concilia, d. 34; Fulgentius, etc., 4040.*

It is certain, among all, that an error concerning the person, by the law of nature, invalidates marriage, because the persons of the contracting parties are the substantial object of marriage; therefore, if the person is changed, there is an error concerning the substance of the contract; for he who intends to contract with one person does not intend to contract with another; thus, *D. Th. Suppl., qu. 51, art. 1; Scotius, l. 7, d. 48, n. 14; Pontius, l. 4, c. 20, n. 3 and 7; Salmeron, de Matrimonio, c. 10, dub. 1, n. 4, with Soto, Bonacursius, Palatinus, and others, throughout.* And this is so even if the error is vincible (capable of being avoided) and very great, as Scotius, n. 7, states; *Rono, p. 155, q. 2; and Salmeron, ibid., n. 5, with Concilia Aversana, Trullana, etc.* Also, even if the error is concomitant, or does not destroy the cause of the contract, namely, if, knowing the error, the marriage would still have been entered into, as Scotius, n. 6, states; *Rono, l. 8; Bonifacius, qu. 2,

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p. 2, n. 4; and Salmeron, ibid., n. 6, with Concilia Aversana, etc., 4041.*

It is certain that an error concerning the quality of a person, which is concomitant, or does not destroy the cause of the contract, does not invalidate marriage; therefore, if someone marries a person who is corrupt, or poor, or of low birth, whom they believed to be a virgin, or wealthy, or noble, but the reason for the marriage was not primarily due to these qualities, but to something else, then the marriage is undoubtedly valid; *Scotius, n. 21; Pontius, l. 4, c. 24, n. 5; Bonifacius, p. 2, n. 6; and Salmeron, de Matrimonio, c. 10, dub. 2, n. 9, with Concilia Trullana, Palatina, Aversana, Dictum, and others, commonly.*

But a great question arises as to whether an error concerning the quality of a person invalidates marriage if it is the cause of the contract, namely, if, knowing the error, the marriage would not have been entered into? The first opinion affirms this, and Pontius, l. 4, c. 24, n. 7, holds this view, citing Arraganes and Ledesma; he also cites Scotius, but not correctly, as we will see shortly. The reason is that when the groom enters into the marriage, believing the bride to possess some quality of nobility, or beauty, etc., he then gives his consent virtually conditioned on the bride possessing that quality; therefore, if that quality is lacking, the consent is lacking. The second opinion, which is common and more varied, denies this, and this view is held by...

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Sanch. l. 7. d. 48. n. 48, who calls it the truest, with Abb. Mol. Lop., etc.; Laym. c. 2. n. 2; Conc. p. 310. n. 4; Nav. c. 22. n. 32; Ronc. p. 155. q. 2; Habert t. 7. p. 797; Holzm. p. 374. n. 541; Pal. p. 4. n. 3, with Valent. Escob. lib. 26. n. 9, with Tol. Gutt. et Fill. et Salm. ibid. n. 14, with Gonet, Less. Bon. Trull. Candido, Aversa, Dic., etc., from D. Th. Suppl. q. 51. a. 2, in Corp. ad 4. et ad 3. The reason is twofold: first, because at that time, there is already a simple, voluntary intention regarding the substance of the marriage, namely, the person; although, with regard to the qualities of the person, the voluntary intention may be lacking to some extent; and second, because otherwise, countless marriages would become doubtful and exposed to litigation. It is not valid to say, as Pontius does, that since consent is an indivisible act, and is carried out with regard to the object with such a quality, if the quality is lacking, the consent is also lacking. Otherwise, it should be said that the contracting party performs two acts: one by consenting to the object or person, and the other to the quality; which Pontius says cannot be said, since the act of the will is one and indivisible. But Salm. correctly responds ibid. n. 44, that although the act of the will is formally indivisible in itself, it can nevertheless be virtually divisible with respect to the object or person; for with that one act of the will, the intention is directed equally to the substance and to the quality, as if two acts were performed; and therefore, if consent is lacking in the less important matter of the quality,

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consent remains, primarily directed to the substance. 4043. — However, the Doctors commonly and correctly teach that an error regarding the quality of a person does indeed invalidate a marriage, if the quality extends to the substance. But there is a great difficulty in determining when an error in quality extends to the substance, or to the person. Consider these three rules. 4044. — The first rule: a quality extends to the substance when someone actually intends to contract under a condition of that quality; for then it is verified that, if the condition is lacking, the consent is entirely lacking. This is certain, as stated by Sanch. l. 7. d. 48. n. 21; Pal. p. 4. n. 5; Pont. l. 4. c. 21. n. 5; and Salm. de matr. c. 40. dub. 2. n. 9, and others throughout. And the same holds true for those authors (see Salm. ibid. n. 44), if the contracting party has expressed an intention before the marriage, and has not retracted it, not to contract except under such a condition; because in that case, that consent is, if not actually, at least virtually conditioned. 4045. — The second rule is: when the quality is not common to others, but is proper and individual to a particular person, for example, if someone believed that they were contracting with the eldest daughter of the King of Spain, then the quality extends to the person; therefore, by erring in the quality, one errs in the person, and therefore there is no marriage, even if that person did not have an express intention not to contract; as stated by Pal. p. 4. n. 5; Petr. t. 4. p. 367. in fin.; Habert. t. 7. p. 796; Holzm. n. 512. See the third.

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Kosso. Laym. c. 2. n. 2. and Spor. p. 287. n. 7. However, I do not agree with the doctrine of Bon. p. 3. n. 7. Sanch. n. 27. and Escob. n. 10. which state that it is the same thing, when someone believes they are contracting marriage with the daughter of the King of Spain, because since the quality of the daughter is common to other daughters of the King of Spain, that quality is not individual, and therefore it does not pertain to the person; and even less do I approve of what Salm. says there. n. 47. with Aversa, namely that the quality also pertains to the person, if it is a vagrant individual, for example, if someone believes they are contracting marriage with the daughter of any king, and they cite D. Th. Suppl. qu. 51. a. 2. ad 5. but not well; for there, the Doctor does not speak of the one who, in contracting marriage, believes he is marrying the daughter of a king; but of the one who beforehand directly and principally intends the quality of the person, namely, to contract marriage with the daughter of a king; then the Angelic Doctor says that, if another is presented to him, the error pertains to the person. His words are: "If the woman's consent is given directly to this person, the error of nobility itself will not impede the marriage; but if she directly intends to consent to the son of the king, whoever he may be, then if another is presented to her, other than the son of the king, there is an error of person, and the marriage will be impeded." Note that here, D. Th.

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clearly speaks not of a woman who erred in believing, but of one who, before the marriage, had a direct intention of contracting marriage with the son of a king, and therefore he says that there is no marriage celebrated with another.

Therefore, the third rule, which D. Thom. states and which is followed by Sotus, Abul. Sylv. Tab. Led. Man. Lop. Rosell. Philiarch. etc. apud Sanch. n. 25; also Holzm. n. 515. and Tamb. de matr. l. 8. c. 2. §. 2. is that, if consent is given directly and principally to the quality, and less principally to the person, then the error in the quality pertains to the substance; conversely, if consent is given principally to the person, and secondarily to the quality: for example, if someone says, "I want to marry Titia, whom I believe to be noble," then the error does not pertain to the substance, and therefore it does not invalidate the marriage. Conversely, if someone says, "I want to marry a noble woman, whom I believe to be Titia," then the error pertains to the substance, because the quality is directly and principally intended, and less principally the person.

From this, we come to the case related by Sanch. l. 7. d. 48. n. 35. namely, when a certain young man asked for the daughter of a certain man as his wife, who was a very beautiful second-born daughter; the father refused to give her to him, and offered him the first-born daughter, who was unknown to the young man, which he requested to be shown first to a certain friend of his; the father, for the first-born daughter, who was ugly, showed the second-born daughter, and when the young man heard that the second-born daughter was also beautiful, he contracted marriage with her, but when he later saw her deformity, he argued that the marriage was null. Sanch. holds that the marriage was valid, because the error was of quality, not of person; but it is more probable that the Pont. l. 4. c. 21. n. 3. Spor. p. 287. n. 8. and Tamb. l. c. n. 2. contradict this. The reason is that, in that case, it is more likely that the quality of beauty was (as we will say shortly above) the principal...

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"He intended to show, not as a person, but as a thing, to his friend, because his will was not truly determined to accept the offer made by his father. But he showed it to his friend."

1017. "It is said that a condition, namely, a servile one, exists, so that if a free man unknowingly enters into a union with a slave woman, or a slave with a slave woman, there is no marriage. And this is according to the more common opinion, and according to canon law alone." (And this is more likely, as held by St. Thomas, Supplement, Question 52, Article 4, Objection 3, and Salm, on Marriage, Chapter 10, page 4, paragraph 25, with the common opinion.) However, it is founded on natural law, to which it is very conformed. The reason is that such a contract is contrary to: 1. The good of the sacrament, since a slave, without the consent of his lord, cannot

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cohabit with a spouse. 2. The good of conjugal fidelity, since he cannot freely fulfill the obligations of the other. 3. The good of offspring, since the slave acquires everything for his lord. However, it should be noted that there are not properly slaves those who are original colonists, or serfs, commonly called *Leibeigene*. See Layman, Book 5, Title 10, page 4, Chapter 2.

1018. "It is certain that if a free man knowingly enters into a union with a slave woman, the marriage is valid; and if, perhaps, civil law states otherwise in the law concerning slave women, in the chapter on incestuous marriages, it is corrected by canon law. Nor would such a person commit a grave sin, even if the union were irregular, according to the canon, 'If anyone...' (Dist. 34). See Salm, ibid., paragraph 20. But if someone unknowingly enters into a union with a slave woman, there is no marriage, whether the person entering into the union is free or a slave, as Buss holds. But this is more likely to be denied, for if a slave enters into a union with a slave woman, the marriage is valid, as absolutely taught by St. Thomas, Supplement, Question 52, Article 4, Objection 4, Sanch, Book 7, Title 49, paragraph 23, and Salm, ibid., paragraph 23, with Bonaventure. Because the Church, by invalidating such marriages, considers the inequality of condition, which is present only when a free man enters into a union with a slave woman.

1019. "Doubt 4: Whether, if the error of a free man is gross, it invalidates the marriage? Some deny this (Soto, Ledo, Villalobos, etc.), as cited by Salm, on Marriage, Chapter 10, page 4, paragraph 27, because in a gross error, there seems to be a voluntary deception. But it is more likely that Sanchez, paragraph 20, and Salm, ibid., paragraph 28, with others, affirm this, because whatever ignorance makes an act at least not perfectly voluntary.

1020. "Doubt 2: Can both parties, at that time, withdraw from the marriage by their own authority? Certainly, the deceived party can, unless there is a scandal; and so also the slave woman. But if the free man, having become aware of her servitude, wished to ratify the marriage, would he be obliged to consent? It is probably the opinion of Salm, ibid., paragraph 34, with Soto, etc., that if the slave woman entered into the union in good faith, she is not obliged; otherwise, if, deceiving the other, she acted in bad faith: because then she is obliged by reason of the injury.

(1) The Civil Code, Article 180, states that in case of error concerning a person, the action of nullity is granted to the deceived party; however, if, for six months from the knowledge of the error, he has cohabited, he is deprived of this action, which, of course, should only apply in civil law.

[*Latin ed. p. 179*]

1024. — Doubt 3. To whom does the obligation of proving the ignorance of servitude belong? Henry, holds that it belongs to the free person. But

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more commonly and probably, Sanchez, n. 8; Salm, ibid., n. 32, with Pal., etc., hold that it belongs to the one who claims the servitude, unless the fact that the person is free is commonly known. 1022. — Doubt 4. Is a marriage valid when a free woman marries a slave, if, through the marriage, the woman becomes free? There are three cases in which freedom is acquired through marriage. I. If the lord grants a dowry instrument to the female contracting party, as stated in law, title 1, chapter on Latin liberties. II. When the lord takes the female as a wife; as stated by Salm, ibid., page 2, n. 35, with Pont., Pal., Vasquez, etc., against Sanchez, Gutt., etc. III. When the lord freely gives the slave in marriage to another, the other being unaware of the slave's servitude, as stated by Auh. Ad hæc, chapter on Latin liberties. In these cases, it is doubtful whether the marriage is valid? Pal. denies this, d. 4, p. 5, § 4, n. 4, with Covar. However, it is more commonly and probably held by Sanchez, l. 7, d. 19, n. 14; Bon., q. 3, n. 3; and Salm, ibid., n. 38, with others. And Sanchez also holds this, l. c., n. 4 (against Pal., l. c., with Pont.), if the lord promises to release the slave shortly, because in that case, she is morally considered free. 1023. — A marriage with a free woman, that is, a slave who has become free, is certainly valid; provided that freedom has not only been promised to her, but has also already been granted, as held by Salm, de matr., c. 10, p. 2, n. 40, with Pont., Pal., etc., against Sanchez and Con. 1024. — It is said that there is a Vow, namely, a solemn vow of chastity, either through the reception of holy orders, or through a solemn profession in a religious order, freely made. I say 4. freely made; because a grave fear invalidates the profession, as seen above, l. 4, n. 197. I say 2. solemnly made; because a simple vow only impedes, but does not invalidate (except for simple vows of the Society of Jesus). See Laym., l. c., c. 3. 1025. — Doubt 4. Does a solemn vow of religion invalidate marriage by divine law, or by ecclesiastical law? The first opinion states that it is by ecclesiastical law, and this is held by Sanchez, lib. 7, d. 26, n. 4, with Scot., Gerson, Host., Abb., etc., because a solemn vow does not invalidate marriage by reason of the vow itself, but by reason of the solemnity; and since the solemnity is by ecclesiastical law, as stated in c. un. de votis in 6; therefore, marriage is invalidated only by ecclesiastical law. However, the second opinion is more probable, stating that it invalidates by divine law, and this is held by D. Th., in 4, d. 38, q. 4, a. 3; also by D. Bonav., Major, Val., Henr., Vict., etc., apud Sanchez, n. 4. The reason is that in a simple vow, only the body is promised to God, but in a solemn vow, through a legitimate acceptance by prelates, the body is also given to God. 1026. — Doubt 2. Whether the Pope can, in any case, dispense with a solemn vow of chastity made in a profession? See the statement in t. 4, n. 256.

[*Latin ed. p. 180*]

The question is raised: where do we find the definitive opinion, affirmed by the same D. Th. l. c. a. 4. q. 1. ad 3. and elsewhere, to which we may add

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Ronc. p. 156. qu. 4. and Fagnan. in c. Cum ad monasterium. p. 2. l. 3. Decretal, who asserts that it is the opinion of the theologians? Does the priestly order, in truth, dissolve a marriage by divine law? See the aforementioned points 1059. How, however, does the vow, made upon the reception of the sacred orders, dissolve a marriage? See the aforementioned points 6. n. 808. 1027.

• It is said that there are four degrees of consanguinity, which are threefold. The first is legal consanguinity: this is the relationship between persons, arising from perfect adoption (that is, when a person from outside is taken as a son or nephew, so that he passes into the power of the adopter, and succeeds to him, or as a necessary heir by will, in the fourth part, or as a son by intestacy, in the whole), for it dissolves marriage up to the fourth degree between the adopter and the adopted person, and their descendants; c. Per adoptionem, caus. 30. q. 3. Thus, to love, caus. 30. q. 3. See Bon. q. 3. p. 5. §. 3. n. 4. and 5. However, see Laym. c. 7. and Dian. p. 9. t. 6. r. 54. where, contrary to the common opinion, it is noted from Henr. Less. etc. that it is probable that, after the Council of Trent, it only dissolves up to the second degree, inclusive, as does spiritual consanguinity. It should be noted that 1. perfect adoption is that by which a person, with the rescript of the prince, passes from the power and family of his own jurisdiction to the power and family of the adopter, just as also his children do. Imperfect adoption is when it is done without the rescript of the supreme prince, but by the authority of an inferior magistrate, and the adopted person does not pass into the power of the adopter along with his children. It is doubted whether legal consanguinity arises even from imperfect adoption? Pal. p. 9. n. 9. and Pontius, Tol. etc. ap. Salm. de matr. c. 42. p. 3. n. 39. assert this. But it is more likely, as S. Th. Supp. q. 57. a. 2. Sanch. l. 7. d. 63. n. 9. Salm. ibid. n. 40. and others say, that it arises only from perfect adoption (1). It should be noted 2. that this impediment is perpetual between the adopted person and the adopter, and the spouse of either; but between the adopted person and the children of the adopter, it is only temporary, that is, as long as the children are under the power of the adopter, as Salm. says with S. Th. and others, see the aforementioned references and chapter, no. 42. Here, it is doubted to whom does this legal consanguinity extend? Pont. Sot. Val. etc. apud Salm. ibid. n. 43. di- (1) From the Civil Code, every adoption is perfected with a regional rescript, and at the very least, it is required that the adopted person pass into the power of the adopter, but it is stipulated that he may continue to live in his paternal home. The adopter must be over 50 years of age, be 15 years older than the adopted person, have no children, and have the consent of his spouse. The adopted person must be of age and have the consent of his parents, if he is not yet 25 years old. Marriage is prohibited: between the adopter and the adopted person, and their descendants; between the children of the adopter and the adopted person; between the adopted person and the descendants of the adopter;

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between the adopted person and the spouse of the adopter, and between the adopter and the spouse of the adopted person. See articles 338, 315, 346, 348, 358, Edit.

[*Latin ed. p. 181*]

It extends up to the fourth degree in a straight line. But Salm. ibid., with Sanchez, Avers, Cornejo, and Hurtado, maintain that it does not extend beyond the first degree, because here it is assigned only by positive law. However, it extends between the adopter and all those who are under the power of adoption. See Salm. de matr. c. 12, p. 3, n. 44, 4028. — "The second is spiritual kinship, which arises by ecclesiastical law between certain persons through baptism and confirmation, and which prohibits marriage (as is stated in c. 4, De cognatione spirituali, in 6, c. Nedum: and it is clear from Trid. s. 24, c. 2. See Bon. q. 3, p. 5, Sanchez, l. 7, d. 34, Suar. 3, p. q. 67) between the baptizer and the baptized, and the latter's father and mother; also between the recipient and the recipient, and the latter's father and mother." (Here, several doubts arise, about which we have already said enough in the treatise on Baptism, so that we may not repeat what has been said there, see the statements there, l. 6, n. 449.) 4029. — "The third is the kinship of carnal consanguinity, which is the bond of persons descended from the same nearest stock, and which prohibits marriage up to the fourth degree of the collateral line, inclusive. Indeed, with regard to the first, perhaps by the law of nature; with regard to the other three, solely by ecclesiastical law. Therefore, the Pontiff can also dispense in these cases for a just cause. The degrees of the straight line, it is probable, are all prohibited by the law of nature. " (But it is very likely that all are prohibited by ecclesiastical law, except for the first degree in the straight line; see the statements in l. 6, n. 470.) "Furthermore, the following rules are established for determining the degrees of consanguinity. The first rule. In the straight line, whether ascending or descending, the number of persons is equal to the number of degrees, with one exception, namely, the stock." (The line is a series of persons descending from one stock through various generations, containing different degrees. The stock is that from which the contracting parties descend), "e.g., father and son are consanguineous in the first degree, grandfather and grandson in the second degree, etc. The second rule. In the collateral line (which is between persons equally distant from the common stock), the persons are as many degrees apart from the common stock as there are degrees, so they are equally distant from each other. Therefore, a brother and sister are in the first degree of the collateral line, uncles and cousins in the second, and their children in the third. The third rule. In the oblique line, between persons unequally distant from the common stock, the persons are as many degrees apart from each other as the more distant person is from the stock. Therefore, a grandfather and a grandson, a son and a father's sister, are consanguineous in the second

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degree, all of which are shown in the attached diagram."

[*Latin ed. p. 182*]

4030. — TABLE OF BLOOD RELATIONSHIP. IV. Great-grandfather. Great-grandmother. IV. Male ancestor. Female ancestor. III. Ancestor. Ancestress. IV. Male cousin. Female cousin. III. Male uncle. Female aunt. II. Grandfather. Grandmother. III. Male cousin. Female cousin. II. Uncle. Aunt. I. FATHER. MOTHER. II. Male cousin. Female cousin. I. Brother. * Hypothetical. I. Sister. II. Sons and daughters of the brother. I. Son. Daughter. II. Sons and daughters of the sister. III. Nephews and nieces from the brother. II. Nephew. Niece. III. Nephews and nieces from the sister. IV. Great-nephews and great-nieces from the brother. III. Great-nephew. Great-niece. IV. Great-nephews and great-nieces from the sister. IV. Great-great-nephews and great-great-nieces. It should be noted here, with Salmant. de matr. c. 14. p. 4. n. 46, and Contin. Tourn. tr. de dispens. in spec. part. 1. cap. 17. art. 1. n. 4, that in a petition for a dispensation, both on the male and female side, the degree of proximity, whether closer or more distant, must be expressed from the line of consanguinity, if the closer degree is the first degree; this is taken from the bull of St. Pius V, *Sanctis*. , because in that first degree, the Pope does not intend to grant a dispensation unless it is expressed.

4034. — There are five degrees of affinity, and these are threefold. The first is the homicide of a spouse by the other spouse, or by a third party, either physically, for example, with a sword or poison, or morally, such as through a command, perfected with the intention that they may later contract marriage. If the killing is attempted but not perfected, or perfected but without the intention of entering into marriage, or with that intention indeed, but not signified externally, or not by common agreement, but by the other party alone, it does not invalidate [the marriage].

[*Latin ed. p. 183*]

Marriage is nullified, unless adultery has preceded it; for then, even if only one has committed the act, and the other is unaware, provided that it was done in contemplation of marriage, it truly dissolves the marriage. Thus, Conc. Less. Sa, Sanch. l. 7. d. 78. n. 43, and d. 79. Adultery is also grounds for nullity when two people carnally know each other, while one of them has a living spouse, and either they enter into marriage presently, or at least give the impression that they will do so after the death of the spouse. But in this case, it is required that the promise be accepted, and that both know the other to be married; for if either is unaware, the marriage is not nullified, if they later enter into marriage after the death of the spouse. Perez, Con. d. 34. n. 57 and 64; Sanch. l. 7. disp. 79. n. 42; Filiuc. n. 256. See also Bon. q. 3. p. 6. n. 8; Dian. p. 3. t. 4. r. 498. Ignorance excuses any act, Sanch. M. Leo in praxi p. 2. s. 284; it is sufficient if there is doubt as to

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whether the living spouse lived at the time of the adultery and the promise of marriage with the adulteress, because it is presumed that they did live, unless death is proven. Nav. Sanch. l. 7. de matr. disp. 79; Bard. d. 6. c. 44. §. 8. 4032.

Thirdly, there is abduction, by which a person is forcibly taken away, for the purpose of carnal relations or to enter into marriage. S. Thom. Mol. i. 3. d. 105. This impediment lasts, according to the Council of Trent, as long as the person is held captive by the abductor, even if they freely consent. Therefore, they can be returned to freedom. However, it is likely that the decree of Trent only refers to abduction that is the cause of marriage. Sanch. d. 43. See Laym. 4033.

We will speak of the impediment due to the crime of abduction in the end of this Doubt, n. 1407. Here, we only speak of the impediment due to the crime of homicide, and due to the crime of adultery. To distinguish this impediment, pay attention to the rule that has been handed down by some. This impediment arises in three cases: when both are guilty (that is, the crime of homicide, as that is understood when one says "both are guilty"), when only one is guilty, and when neither is guilty. And I. When both are guilty, that is, when there is no adultery, but both conspire to commit homicide, with the intention of marrying each other. II. When only one is guilty, for example, when a man, after adultery, kills his spouse in order to marry the adulteress, even if the adulteress does not conspire to commit the homicide: provided that the intention of the man is made known to her. III. When neither is guilty, that is, when there is no homicide, but only adultery, and a promise of marriage, which is not feigned, and which has been at least accepted, before the spouse of the adulterer dies.

Now, regarding the first case, namely, when both are guilty, that is, when the homicide of the spouse occurs without adultery, in order to incur the impediment of the crime, it is required that 4. the killing occur through the common counsel of the man and the woman; thus, commonly, Pell. l. 4. de matr. c. 22. v.; Crime, Sanch. l. 7. d. 78. n. 9; Pent. l. 7. c. 45. n. 4; Pal. p. 42. n. 3; Bon. p. 6. n. 5; Cabass. l. 3. c. 23. n. 3; Conc. p. 322. n. 4; Holzm. n. 568; and Salm.

[*Latin ed. p. 184*]

Concerning Matrimony, chapter 42, paragraph 4, number 55: It is required that homicide be committed with the intention of contracting marriage with an adulterer, as is commonly held by the Gloss in chapter "Si quis vivente," cause 34, question 4, word "Occidisse," Bellarmine, book 1, chapter 5. Add to this, Palatine, number 5; Pontifical, book 1, chapter 45, number 5; Cont. Tournhem, treatise on dispensations in special cases, part 4, chapter 3, note 4; "Whether indeed..." Layman, chapter 40, number 4; Sporer, number 102; Salmeron, "De Matrimonio," book 1, chapter 42, paragraph 4, number 53; Sanchez, number 43, with St. Bonaventure, Soto,

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Palatine Major, and many others, against Cajetan and a few others, who say that it is not required that the intention of marriage be present with the adulterer, because in the aforementioned chapter "Laudabilem," no mention is made of this condition. But the aforementioned authors rightly respond that, although the aforementioned condition is not expressed in law, it is nevertheless inferred from the purpose of the law, namely, that one spouse should not plot the death of the other, so that he may later marry another.

Number 1034: It is noted by Sanchez, number 9, and Salmeron, "De Matrimonio," book 1, chapter 42, paragraph 4, number 53, with Candiot and Dicena, that it is sufficient to incur the impediment if the initiative for the murder comes from the machinations of both parties, provided that the intention of marriage is present on the part of only one. However, is it required that such an intention be at least made manifest to the other party? Sanchez, book 7, title 78, number 49, with Manutti and Vega, and Palatine, page 42, number 5, with Soto and Guttieri, deny this, both because the Church does not precisely require intention, but rather the external act of killing committed with this intention; and because, when murder is committed, this intention is already presumed, as argued in Clementine, book 4, section 1, "Concerning Heretics," where inquisitors are excommunicated who commit injustice out of hatred for the accused, or who, out of love for them, fail to investigate. On the other hand, Pontius, book 7, chapter 45, number 5; Diana, page 9, treatise 7, response 25; and Salmeron, cited above, number 53, at the end, with Vasquez, Perez, and Hurtado, argue that the Church cannot punish what it cannot know; for human law can only demand obedience that is due to a human being; but obedience is only due to a human being for external actions that are commanded; internal intentions are due only to God. They respond to the case of Clementine that there, those who are excommunicated are not those who commit injustice simply out of internal hatred or love, but those who, in addition, give external evidence of such hatred or love. Therefore, it seems to me more probable to say: If there are sufficient indications of the intention of marriage preceding the killing, such as gifts, familiarity, love letters, and the like, between those who intend to marry, then the impediment is incurred; otherwise, if the intention remains entirely internal; for in that case, the Church cannot punish the killing committed with such an intention, if no indication of it has preceded.

Number 1035: From chapter 2, "One Party Committing," namely, from homicide committed with adultery, it is sufficient to invalidate the marriage if, while the adultery persists, only one party commits the homicide, even if the other is unaware, as is commonly held by Sanchez, book 7, title 78, number 9; Pontifical, book 7, chapter 45, numbers 4 and 5; Palatine, page 42; St. Bonaventure, page 6, number 8; and Salmeron, "De Matrimonio," book

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1, chapter 42, paragraph 4, number 47, with Dicena.

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Avers. Cornejo, etc. This is evident from c. 5 of the Decrees, cause 31, question 4, where it is stated that, notwithstanding adultery, the marriage remains valid after the death of the spouse, unless it is noted that the man or woman caused the death of the spouse who had died. Also, from c. 1 of "De eo qui dux," where it states: "No one can enter into marriage who has previously been defiled by adultery; especially not with the one to whom he had given his faith, while his wife is still living, who has plotted the death of the wife." Furthermore, from c. 6 of the same title, it was declared that the marriage with an adulteress is valid, unless one of them plotted the death of the deceased wife, or if, while alive, one gave his faith to enter into marriage.

1036. To incur this impediment, it is required that:

I. The death truly resulted from a blow, poison, etc., given by the spouse, or by his order; as stated by Pontius, n. 4; Palafox, n. 4; Bonilla, n. 6; Salm, ibid., n. 48, with Sanchez, n. 7, and the common opinion.

II. That the adultery preceded the killing; Pontius, n. 4; Elbetius, p. 408, n. 170, and Salm, ibid., n. 50, with Conc. III.

III. That the prior marriage was valid, even if not consummated, and even if a divorce was obtained; Sanchez, n. 20, and Pontius, n. 3, from c. 6 of "De eo qui dux."

IV. That the adultery was consummated, so that they became one flesh: hence, if a man does not truly sow in the woman's vessel, this impediment does not occur; as stated by Sanchez, book 7, title 79, at the beginning; Pontius, n. 4; Palafox, n. 8; Elbetius, in the same place; and Salm, ibid., n. 50, and c. 4, p. 1, n. 3, with St. Thomas, St. Antoninus, and the commentators. From this, it is doubted whether, for the consummation of adultery, it is required that not only the man, but also the woman sow. Sanchez, book 2, title 21, n. 11, and Palafox, Trull., Bonilla, and c., apud Salm, dictionary, c. 4, n. 4, deny this. But many others affirm it, as stated by Conc., p. 354, n. 4, with the common opinion; St. Bonaventure, Innocent Hostiensis, and Viguerius, apud Sanchez, in the same place, and expressly states it in D. Thomas, Supplement, question 55, article 4, at 2: "The man and the woman become one flesh through the commingling of seed." Therefore, no matter how much someone invades or breaks the chastity, unless the commingling of seed follows, no affinity is contracted. And therefore, they rightly call this opinion probable, as stated by Sanchez, in the same place, and Salm, with Palafox, Trull., Dianus, and Ronc. See below, n. 1075.

V. That the adulterers are capable of marriage; therefore, if a woman has relations with a man whom she believes to be divorced, this impediment does not occur; as stated by Sanchez, book 7, title 78, n. 12; Palafox, p. 12, n.

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8; and Conc., Avers., Dic., etc., with Salm, de matr., c. 12, p. 4, n. 51, from c. "Veniens" and c. "Propositum," de eo qui dux, etc. But does crass ignorance excuse adultery? Valerius, Conc. Per., etc., apud Salm, ibid., n. 52, deny this, because, as they say, true adultery would be present. But Busenius, as above, and Sanchez, book 7, title 79, n. 38, and Salm, in the same place, with Rebellinus, affirm this; because any ignorance is an excuse.

[*Latin ed. p. 186*]

This is the case, according to rule c. 10 of the canons concerning marriage; furthermore, because adultery requires deceit, according to the penal law, title "De adulteriis," section 1, and the Julian law. However, with gross ignorance, unless it is at least feigned, deceit is not present, according to the Gloss on the law "Magna," title "De verbis," section 1, concerning significant words. To have committed the killing with the intention of marrying the adulteress, at least on the part of the killer, it is necessary that he externally manifest such an intention to the other, according to the opinion cited above in n. 1034, where we said that manifestation is required at least through preceding indications; and this is stated by Salm, ibid., n. 53, with Sanchez, Pontifical, Vasquez, Perpetual, Dictionary, etc. Hence, it follows that if a man kills his wife in order to enjoy another woman's company, or for some other reason, even if she consented to the killing, but without the intention of marriage, no impediment arises. Indeed, if a man kills his wife in order to take another, he can then take an adulteress, according to Sanchez, book 7, title 78, n. 48; Pontifical, n. 5; Palafox, page 42, n. 5; Bonaventure, page 6, n. 4 and 8; and Salm, ibid., n. 54, with Palafox, etc. However, it is different if he kills her in order to take a particular adulteress, as stated by Salm, cited, n. 54, in the middle, with Controversies, Dictionary, etc., 1037.

From chapter III, "Concerning those who are not present," namely, when there is no killing, but only adultery with a promise of marriage, as is stated in the cited chapters 1 and 6 concerning one who is to be taken in marriage, and more clearly in the final chapter of the same title. Sanchez, book 7, title 79, n. 43; Pontifical, book 7, chapter 45, n. 7; and Salm, "De Matrimonio," chapter 42, page 5, n. 64, with Palafox, Bonaventure, etc., teach that this impediment arises even from the faithful spouse, even with an unfaithful adulteress, because although the Church cannot punish the unfaithful one, it can punish the faithful one. However, for this impediment to arise, it is required that 1) both the adultery and the promise were present while the spouse was living, as stated by Sanchez, book cited, n. 5; Sporer, n. 108; and Salm, ibid., n. 60, with Bonaventure and Concini. 2) that the promise was not revoked before the adultery; Sanchez, ibid., Sporer, n. 107; and Salm, dictionary, n. 60, at the end, with Concini and Bonaventure. I said "before the adultery"; for if it was revoked afterward, the impediment remains, since it has already been contracted,

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whether the promise preceded or followed the adultery, as is expressed in the final chapter concerning one who is to be taken in marriage, where it says: "Furthermore, it is not to be tolerated if, before or after (given in good faith), while the wife is still living, he has defiled her with adultery." 3) that the promise was external and accepted; hence, it is not sufficient if the adulteress merely negatively expressed herself, as is commonly taught by Palafox, page 42, n. 44; Bonaventure, page 6, n. 9; Cabrol, book 3, chapter 23, n. 9; Concini, page 322, n. 6; and Salm, ibid., n. 64. 1038.

But a doubt arises: 4) Is the adulteress's silence a sufficient sign of consent? Pontifical, book 7, chapter 45, n. 2, and Concini, "Rebus," and Hurtado, apud Palafox, page 42, n. 44, affirm this, because in matters that are favorable, silence is considered consent. But Sanchez, book 7, title 79, n. 25, and Palafox, book cited, with Guttieri, deny this, because such a matter is rather odious than favorable, since...

[*Latin ed. p. 187*]

He who accepts [the false marriage] is subject to ecclesiastical penalties. Meritò Spor. n. 449. Tambini states that both opinions are probable. 4039. — Dubit. 2. Does a fictitious promise of marriage, accompanied by adultery, create an impediment? They affirm. (provided the fiction does not appear externally) Sanch. l. 7. d. 79. n. 20. and Pal. p. 42. n. 42. with Conini and Guttieri, because such a fictitious promise is already sufficient to entice the adulteress to seek the death of her spouse, which is what the laws intend to prevent. However, it is more probable and commonly held that it does not create an impediment (Bon. p. 6. n. 8. Spor. n. 409. Holzm. n. 562. Croix n. 625. Elbel n. 175. and Salm. de matr. c. 42. p. 5. n. 62. with Laym. Perez, Dic. etc.). The reason is that the laws cited in n. 1035 require faith, or a promise of marriage; but a fictitious promise is not a promise, and although with such a fictitious promise the danger of the adulteress being deceived into causing the death of her spouse is not avoided, nevertheless, since we are dealing with a prohibitive law and a detestable matter, a strict interpretation must be followed; all the more so because the end of the precept is not violated. 4040. — Dubit. 3. Does a conditional promise create an impediment in that case? Some affirm (Cont. Tourn. tr. de dispens. in spec. part. 4. c. 5. n. 2. and Sanch. l. 7. d. 79. n. 44. with Nav. Man. and Vega); because a conditional promise creates an obligation not to retract, and through it, true faith is truly given, and truly an opportunity is provided to cause the death of the spouse. However, it is more probable that it does not create an impediment (Layn. c. 40. n. 3. v. Sexta, Holzm. n. 562. Tamb. c. 6. §. 3. n. 4. Elbel n. 462. and Spor. n. 409. with Conini and Perez). The reason is that the laws require faith, which, when we are dealing with detestable matters (where the law must be strictly interpreted), must be understood as pure and absolute faith, or a promise. Furthermore, a conditional promise does not provide as much

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of an opportunity to cause the death of the spouse as an absolute promise. However, these authors state that such a promise does indeed create an impediment after the condition has been fulfilled before the spouse's death. But it could be replied that that promise, as long as the condition is not fulfilled, cannot be said to be pure in itself, as required by law; and since most Doctors teach this exception, I will leave the matter to the wise. 4041. — Dubit. 4. Is it necessary for the promise to be mutual in order to create an impediment? Some affirm (Bellarm. de matr. l. 4. c. 22. v. Casu. 2. Elb. n. 165. and Holzm. n. 562; also Laym. Henr. Gob. and Dian. ap. Croix n. 626). And this is clearly indicated by the Glossa in c. Significasti 6. de eo qui dux, because, as they say, the laws seem to require a promise that, in other respects, creates an obligation on both sides to enter into marriage. However, it is more commonly and probably held that it is not necessary (Sanch. l. 7. d. 79. n. 42. Bonac. p. 6. n. 9. with Con. Sylv. Perez, and Reb. and Pal. p. 42. n. 43. with Sot. Hurt. and the common opinion). The reason is that, as is evident from c. 4. and 6. de eo qui dux (as mentioned in n. 4035).

[*Latin ed. p. 188*]

No mention is made of a promise, but only of faith given. Therefore, one promise is required in the case of betrothal between free persons, in order to obligate them to marriage, which depends on natural law; another is required between married persons, in order to introduce an impediment, which depends on positive law. 1042. Lastly, it should be noted that to the three crimes from which an impediment arises, a fourth is added, namely adultery committed with a marriage attempted, that is, when someone, while living with his wife, has intercourse with another, with whom he has also dared to contract marriage; this marriage is null, whether the intercourse preceded the attempted marriage or followed it. See c. Significavit 2; c. Ex Litterarum 4; c. Omni haberet 5; and c. Si quis 8, concerning him who has led [another] into marriage. See Croica, l. 6, p. 5, n. 624. 1043. But he who, while his spouse lives, promises marriage to another, but without adultery or attempted marriage, although he does not incur an impediment, is nevertheless not excused from mortal sin; as Sanchez, l. 7, d. 79, n. 40; Laym., c. 10, in fine; Bon., p. 6, n. 11; Elb., n. 104; and Pal., p. 12, n. 15, with Abb. from c. fin. de eo qui duce. 1044. "It is said: VI. Disparity of cult, or religion, which separates marriage between a baptized person and an unbaptized person, even a catechumen. This is only by ecclesiastical law, not by scripture, Bon., q. 3, p. 7, ex Con. etc. However, it does not separate between baptized persons, although it may impede. Marriages with heretics, although illicit, are nevertheless valid. See l. 3, n. 15. (As it is stated in c. 4, de Divort. See the words in l. 6, n. 56, where add what is said by the Most Holy Pope Benedict XIV in the Bull, Matrimonia, issued on November 4, 1741. (You will find it in the end of the Opera) where, after the Pope declared marriages between heretics to be valid, he said: "Grieved

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that there are among Catholics who, in a mad and shameful infatuation, do not abhor these detestable marriages, which the Holy Mother Church has always condemned, he seriously and gravely exhorts and warns all Bishops, Vicars, and parish priests in those parts, to keep Catholics away from such marriages as much as possible, for the ruin of their own souls, and to effectively prevent them.") 1045. "It is said: VII. Force, or violence, and grave unjust fear, inflicted in order to extort marriage; and it invalidates in both forums. (From c. Significavit, c. Cum locum, c. Veniens, and c. Consultationi, concerning him who has led [another] into marriage. See Salm. de matr., c. 9, dub. unic. n. 2 and 3, with D. Th. and comm. And this even if an oath is involved; unless the oath is of giving free consent, because then it truly obligates, as well noted by Viva, q. 4, art. 3 and 4. "Indeed, by natural law, if it is inflicted by the contracting party; by positive law, if it is inflicted by a third party. I add: 1. grave, such as that which falls upon a steadfast man, e.g., death, perpetual imprisonment, loss of property, unjust excommunication.

[*Latin ed. p. 189*]

Communication, a great indignation of the very stern father. But when fear is slight, the contract is considered spontaneous; and this, in order to avoid disputes, even in marriages, so that the sacrament may be observed. *Reb. Sanch. Pont. etc.* commonly with *Diana*, page 3, volume 4, number 230, and volume 5, number 117, although *Navarr.*, *Gabr.*, and *Cov.* deny this, if the fear has so extorted the consent that it would not have been given otherwise. I add 2: unjustly; because if it is justly imposed, the marriage is valid: for such a one is not so much forced by another, as by himself, who gave the cause, as if, for example, a miner's daughter, apprehended in a crime, is accused, unless she marries him. I add 3: to extort; because a marriage contracted out of fear, even the most serious, from any source and at any time, is valid, provided it is not to extort the marriage; for then it is not so much contracted out of fear, as chosen as a means of avoiding danger, and the marriage is simply voluntary. Hence, it is resolved that a marriage is valid in the following cases. See *Bonif.*, question 3, page 8, number 4. If a concubinarius, out of fear of hell, or of death, in sickness, or shipwreck, contracts marriage with a concubine. *Bonif.*, *loc. cit.*, number 2. If someone, persuaded by a doctor that he will not live long unless he takes a wife, takes her. *Bonif.*, *loc. cit.*, number 49. If, being imprisoned, with the hope of escaping, he contracts marriage with the daughter of the jailer. *Sanch.*, book 4, title 42, number 10. *Con.*, title 28, doubt 4, chapter 3, number 4. If, being condemned to death, in order to escape, he takes a prostitute, or another. *Con.*, number 40. *Fill.*, chapter 4, question 9. If a prince, besieged, offers his daughter in marriage to the besieger, in order to be freed from the siege. *Ibid.* 6. If a kidnapper or deflowerer of a virgin offers himself to the judge to marry her, out of fear of death. *Bonif.*, number 22,

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from *Reg. Henr.*, etc. 7. If, lying near death, he contracts marriage with the daughter of a doctor, who otherwise would not treat him. *Reb. Sanch. d. 42. Con. Fill. n. 103*, although some deny this. 8. Although a grave fear has been imposed, so that only the marriage in general is contracted, some teach that there is no contract at all. *Sanch.*, *Salas*, *Pal.*, *Pont.*, etc., with *Diana*, page 4, volume 4, number 33, against *Azor* and others. 4. When a marriage has been contracted out of grave fear, it is taught (in the forum of conscience) that it is not necessarily perfect in itself, and that it can be dissolved against the will of either party, even by him who was free from fear, even if the fear was caused by himself, or by his fault. *Sanch.*, *Villal.*, *Hurtad.*, and *Ochag.*, with *Diana*, page 3, volume 4, number 229, and page 9, volume 8, number 27, against *Con.* and *Pont.* 1046. 4. It is to be supposed that force differs from fear; for force entirely removes the voluntary, since it is from the beginning external, and itself has suffered force.

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Nothing is accomplished; moreover, fear does not simply remove the voluntary aspect. Hence, in book 4, sections concerning that which, because of fear, etc., fear is defined as: "The trembling of the mind caused by a present or future danger." Here, it must be understood that "vis" (force) is used to mean fear. We must assume 2. that fear is either intrinsic or extrinsic: intrinsic fear is that which arises from an intrinsic or natural cause, such as the fear of death from illness or shipwreck, etc.; extrinsic fear, on the other hand, is that which arises from an extrinsic and free cause, namely, from a man, and this is required to invalidate a marriage. We must assume 3. that fear is either grave or light, or rather, it falls upon a steadfast man. Grave fear is said to exist when the evil feared is grave. 1047. — In order for fear to be considered grave, it is required 4. that the evil threatened be grave, at least with respect to the one experiencing the fear, from book 5, sections concerning that which is feared, etc. It is sufficient, however, that the evil be absolutely grave in itself, according to the common opinion of men, even if it is not greater with respect to that which is chosen, as commonly noted by Sanch. book 4, title 2, number 3; Pont. book 4, chapter 2, article 2; and Boss. volume 4, chapter 40, number 13, with Less. Nav. and Con. It is also sufficient if the evil is feared not only for oneself, but also for others strictly connected to oneself; Sanch. title 4, number 1; Pont. chapter 3, number 4; Less. book 2, chapter 47, number 35; Salm. de matr. chapter 9, page 1, number 48; and Boss. number 48, with Villal. from book 5, sections concerning that which, etc. Provided that the relatives are connected at least in the fourth degree, whether they are blood relatives or affine, as noted by Sanch. number 5 and Pont. number 5, with others. They also extend this to servants and domestic workers, from title 6, concerning excommunication, and from Clement 1, concerning excommunication, Pralat. It is required 2.

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that the evil be prudently (and not vainly or lightly) feared as being about to be inflicted; Sanch. book 4, title 4, number 47, and Salm. ibid. number 49. It is required 3. that the evil cannot be avoided in any other way; Sanch. and Salm. books, chapters, and Boss. chapter 40, from number 45. It is required 4. that the one threatening the evil be able to carry it out, unless he is a verbose person who easily makes threats and therefore does not carry them out, or is easily appeased, as noted by Sanch. title 4, number 49 and 20; Salmant. dict. number 49, with Pal. Cornejo, Dic. and Aversa, and Boss. number 45, with Barb. Menochio, etc. Furthermore, Sanch., Salm., and Boss. books, chapters, add that the one instilling fear must be accustomed to carrying out threats, from book 5, sections concerning those things which constitute fear, etc., where it is stated: "Fear must be proven not only by words, or disputes, but by the atrocity of the act." However, with the permission of the esteemed Doctors, I do not know if I can agree with this doctrine, for even if someone is not a verbose and frivolous person, I do not see why it could not prudently be feared an evil that a serious and determined man threatens with purpose. However, Sanch. title 5, number 5, and Boss. chapter 42, number 55, with Barb. Gutt. Arrag. and Rota Rom. from book 3, sections concerning force, and armed force, concede that it is sufficient to instill grave fear if others, armed, threaten marriage. 1048. — Grave evils, the fear of which invalidates marriage, are—

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I. Death, or a grievous affliction, as stated in "Cum dilectur, de his quæ vi, etc."

II. Exile, as in Sanch. l. 4. d. 5. n. 8, with Soto, Henry, etc.

III. Imprisonment, as in "Qui in carcerem," ff. de eo quod metus, etc. However, Sanch. n. 9, with Soto, Rodriguez, and Led, and Boss. c. 42. n. 46, with Con. Less. Gutt., (contrary to some), explains this as referring to long-term imprisonment or cruel confinement.

IV. Loss of status, as in "Isti," ff. eod. tit., or loss of honor, Sanch. n. 41, and Boss. n. 42 and 43, with many others.

V. Violation of a virgin's chastity, or that of an honest widow; Sanch. n. 42, and Boss. n. 45, with Pontio, etc.

VI. Damage to reputation, for example, if someone, having been caught in a shameful crime, is threatened with exposure, as stated in "Nec timorem" 7. ff. eod. tit. See Sanch. n. 44 and 45. And Boss. n. 44, with Pontio, Barb., etc., speaks of the fear of great shame, namely, if someone threatens to expose you publicly unless you enter into marriage.

VII. Unjust excommunication (unless it can easily be remedied), because this at least inflicts a grave external mark of infamy. Sanch. n. 47, with Host. Abb. and Sylo, and Boss. n. 53, with Pont. Asor, Con., and others generally.

VIII. Loss of property of great value, Sanch. n. 25, with Soto, Cord., etc.,

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and Boss. n. 49, with Barb. Gutt., etc.

IX. Loss of great profit; but rightly, Sanch. n. 28, and Boss. n. 62, with Pont. and Con., explain that this refers only to the case where someone has a right to that profit, or is at least unjustly prevented from obtaining it, because it would not be proper to fear the loss of property, but rather to be tempted by the prospect of profit. Sanch. notes in d. d. 5. n. 5 that when the cause of fear is not expressly stated in law, it must be determined by the judge's discretion.

1049. In order for fear to invalidate a marriage, it is required that:

I. It originate externally, from a person, and not internally, as commonly taught by Sanch. l. 4. d. 1. n. 2, Pont. l. 4. c. 49. n. 3, Bon. p. 8. num. 46, Rone. p. 162. qu. 3. r. 2, Boss. c. 43. n. 7, and Salm. de matr. c. 9. p. 3. n. 44, with Soto, Cov., Aversa, Candido, and others.

II. The fear be instilled with the intention of causing the marriage to take place, Sanch. l. 4. d. 12. num. 3, Bon. l. c. Holzm. n. 579, Rone. l. c. r. 3, and Salm. ibid. n. 52, with Pont., Soto, Trull., Henry, and others; and this is evident from "Cum locum" and "Veniens, de spons."

III. The fear be unjustly instilled; Sanch. d. n. 8, Bon. p. 8. n. 6, Holzm., and Rone. ll. cc. Thus, if a father discovered the seducer of his daughter and threatened him with death to extort a marriage, the marriage would indeed be null, as stated in the aforementioned "Veniens, de spons." However, if he threatened death to avenge an injury, and the seducer entered into marriage to free himself, then the marriage would not be null, because the fear was not intended to extort the marriage; thus, generally, Sanch. l. v. v. Quarto, Pont. n. 10, Bon. n. 22, Salm. ibid. n. 46 and 47, and Boss. n. 488, with Host. Abb. Con. Henriq. Gutt.

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V. Hurt, etc. The same must be said if the father threatens to accuse the rapist before the judge, and the latter, to avoid being accused, takes the daughter; Busemb., as above, Sanch., loc. cit., and Boss., n. 489. The same applies if the judge confines the rapist in prison, in order to induce him to either take the girl or provide her with a dowry (according to what is prescribed in c. 4 and 2, concerning adultery), and he enters into marriage. Conversely, there would be no marriage if he were absolutely compelled to take her, because, by law, he is not absolutely obligated to take her, but rather to either take her or provide her with a dowry, as rightly stated by Sanch., l. 4, d. 13, n. 7; Pont., l. 4, c. 49, n. 14, in fine; Boss., n. 173, with others. Unless (it is excepted) the rapist is unwilling, or unable, to compensate for the damage in any other way; and justly so, because the rapist, when he does not provide a dowry, is absolutely obligated to take the violated woman, as taught by Lugo de just., d. 42, n. 54; Tamb., de rest., c. 5, n. 27; Salm., eod., tit., c. 3, p. 4, § 4, n. 9, with others in common.

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4050. — Doubt. 1. If a judge unjustly condemns a guilty person to death, and promises to release him if he takes his daughter, would such a marriage be valid? The first opinion affirms, and this is held by Sanch., l. 4, d. 42, n. 4, and Salm., de matr., c. 9, n. 49, with Cov., Avers., Dio., Trull., and Candido. The reason (as they say) is that, in this case, no fear is instilled in him to extort the marriage, but rather a means of obtaining his release is offered to him by entering into marriage. However, the second opinion, which is truer, denies it, and this is held by Pont., l. 4, c. 49, n. 9; Boss., c. 42, n. 186; Dian., p. 4, tr. 7, r. 222, with Cov., Gutt., Ledesm., and Vega. The reason is that, in this case, fear arises from an external source, namely, from the judge's injustice; for although the condemnation was not initially made to extort the marriage, nevertheless, the execution of the sentence instills fear for this purpose, from which the judge should abstain. Otherwise, as Bossio says, it would be different if another third party offered him release if he took his daughter; in this case, he would not instill any fear, but rather offer a means of avoiding fear.

4054. — Doubt. 2. What if the guilty person justly deserves death, and the judge offers him release if he takes his daughter? Pont., l. 4, c. 49, n. 43, also denies that such a marriage would be valid, with Rebell., and Mol. and Bon. agree with Boss., c. 42, n. 184, because, although the judge justly condemns him to death, he unjustly extorts his consent to the marriage, to which the guilty person is not obligated, unless it were as compensation for the crime, namely, if there were a custom that the life of the guilty person should be pardoned if he takes the wife, or the daughter, of the deceased, as stated by Sanch., l. 4, d. 42, n. 42. However, it is more probable that Boss., loc. cit., and Sanch., n. 44, with Covar., Praepos., Vega, Led., Gutt., and Palac., affirm that such a marriage would be valid. The reason is that, in this case, no fear is instilled by the judge, but rather it is removed: and although the judge commits an injustice against the law, he nevertheless shows favor to the guilty person.

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1052. — Objection. 3. What if a judge, based on alleged and proven facts, compels someone who is truly innocent to marry? The first opinion states that such a marriage is valid, and this is held by Sanchez, book 4, title 43, number 8; Bonaventure, page 8, number 46; Bossuet, chapter 12, number 486; and the Decretum and the Council of Trent, as cited by Salmeron, on marriage, chapter 9, page 3, number 50. The reason is that such coercion is already approved by canon law, and therefore it cannot be said that it is annulled by the same law, since it is already valid according to natural law, according to the opinion of many, as will be seen in number 4054. The second opinion, however, which is probable, and perhaps more probable, states that the marriage is null. This is held by Pontus, book 4, chapter 49, number 44; Contenson, *Dispensations*, part 1, chapter VII, section 5;

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but Diana, page 4, treatise 4, response 83, and Salmeron, *ibid.*, number 54, consider it probable, along with Aversa and the Decretum. The reason is that the judgment is based on a false presumption, and therefore it is not binding; thus, even if the judge justly decrees according to what is alleged, the party is not nevertheless bound to contract a marriage contrary to the truth. It cannot be said that something approved by canon law cannot be condemned by the same law. For this would only be true if fear only invalidated the marriage according to ecclesiastical law, but it is very probable that fear also invalidates it according to natural law, as we will see in question 5 and following.

1053. — Objection. 4. Can a physician validly marry a patient if the physician refuses to treat the patient unless the patient enters into marriage? Sanchez absolutely affirms this, book 4, title 42, number 45, along with Ledo, Cordes, Vega, and Lopez, and Bonaventure, page 8, number 23, along with Sahagún, Concinius, and others. The reason is that in this case, the fear is not instilled externally by the physician, but internally by the disease itself. However, Pontus, book 4, chapter 49, number 45, and Salmeron, *ibid.*, number 54, along with Aversa, Robertus, and Bossuet, chapter 12, number 494, make a better distinction, and say that if the physician is not obligated by justice to care for the patient, then the marriage is certainly valid; otherwise, if the physician is obligated by justice, then even though the fear primarily arises internally from the illness, it also arises externally, namely, from the denial of treatment, which is truly a grave harm. They also say the same, Salmeron and Bossuet, that if necessity urges, and no one else is present, even if the physician is only obligated to treat out of charity.

1054. — Objection. 5. Does fear invalidate a marriage according to ecclesiastical law, or natural law? The first opinion states that it invalidates according to ecclesiastical law, and this is held by Sanchez, book 4, title 44, number 2; Layman, book 3, treatise 4, chapter 6, number 3; Bonaventure, page 8, number 8; Lessius, book 2, chapter 47, number 47; Concinius, page 206, number 21; Contenson, *loc. cit.*; Roncaglia, page 162, question 2, response 1, along with the common opinion, as asserted by Salmeron, on marriage, chapter 9, single doubt, number 7, along with Gonet, Soto, Valentia, Palafox, and Ledo. The reason is that in such a marriage, there is already sufficient consent, and even though freedom is diminished by fear, this diminution does not render the marriage null.

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Concerning marriage; for otherwise it ought to be annulled even by internal fear, which no one denies. But when such a marriage is naturally illicit, the Church justly annuls it. The second opinion, which is no less probable, and perhaps more probable, holds that fear annuls marriage by the law of nature. This is held by Pont. l. 4. c. 14. n. 4. Nav. c. 22. n. 54. Diana p.

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4. tr. 4. r. 33. Boss. c. 12. n. 269. with Mol. Cov. Med. Comit. Reb. Vill. etc. Holzm. n. 583. in common with Scotus and the Scotists, as he asserts; and it is expressly held by D. Th. Suppl. qu. 47. a. 3, where he says: "The bond of marriage is perpetual, and therefore that which is contrary to perpetuity destroys marriage, unless it is arranged by the natural law itself that it is null from the beginning." The second reason is that fear which falls upon a constant man destroys the perpetuity of the contract, because restitution to the integral state can be sought; and therefore, coercion by such fear, which falls upon a constant man, destroys marriage, and no other. The first reason, according to D. Th., is that all contracts entered into under fear are not firm and perpetual, and therefore they can be rescinded by restitution to the integral state; but the contract of marriage, since it is perpetual and indissoluble in itself, can only enjoy restitution to the integral state if it has been arranged by the natural law itself that it is null from the beginning. The second reason is that marriage is a perpetual bond of mutual love between spouses, as it is written in Matthew 19: "A man shall leave his father and mother, and cleave to his wife." Therefore, when marriage is contracted out of fear, it must be null, otherwise mutual love cannot exist with fear; for no one is accustomed to cling to something that they hold unwillingly. The third reason is that if such a marriage were naturally valid, nature would approve of an act from which very grave evils arise against the common good, namely, that an innocent person is often forced to lead a hard life, and the guilty person enjoys an advantage from his injustice: which is not in accordance with natural reason. Furthermore, this opinion is validly confirmed from c. Cum locum 14. de spons., where it is stated: "When there is no place for consent, where fear or coercion intervenes, it is necessary that, where the consent of someone is required, the matter of coercion be rejected; but marriage is contracted only by consent; and when it is inquired of the very person, he must enjoy full security, so that his intentions may be investigated, lest he say that he approves of something he hates out of fear, and lest the consequences that usually follow forced marriages occur." Therefore, observe that the Pope is not speaking here as if he were establishing something new, but rather as if he were declaring and promulgating the natural law; which proves that marriage is null by the very law of nature. 1055. — Dubit. 6. Does slight fear annul marriage? Lugo de just. d. 22. n. 144. in fin. Nav. c. 22. n. 54. Tamb. Dec. l. 1. §. 6. n. 12. Viva de matr. q. 4. a. 2. n. 6. and Cov. Rodr. Man. et Veracr. ap. Salm. de matr. c. 9. p. 2. n. 29. affirm this, and Sanch. de matr. l. 4. d. 47. n. 2. Tamb. Dec. l. 4. §. 6. n. 12. and Viva consider it probable.

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From *de Matrimonii Causa*, Question 4, Article 2, Number 6. It is, however, more accurately maintained by Bus, as above, with the common opinion, *Pontificalis*, Book 3, Chapter 48, Number 2; Palatine, *De

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Peccatis*, Part 1, Page 12, Number 4; Tambovius and Viva, *Collectores*, Chapters, Bossuet, Chapter 12, Number 463, and Sanchez, *Loc. Cit.*, Number 3, along with Dominus Bonaventure Soto, Palatine, Arminius, Arragan, and others, most commonly; and Dominus Thomas, *Supplementum*, Question 47, Article 3, where he states: "Coercion through fear, which affects a steadfast man, invalidates marriage, and nothing else." The reason is that a marriage begun out of slight fear is neither valid in natural law, nor in positive law; not in natural law, because he who contracted under slight fear is not considered to have entered into the contract unwillingly, since he could easily have resisted that fear. Nor in positive law, because (as is clear from Chapter 15 of *De Sponsis* and Chapter *Consult. de iis quæ vi, etc.*) only marriages begun out of grave fear are declared invalid; and this is just, because otherwise, if even slight fear were to render marriages invalid, countless marriages would be dissolved. 4056. — Doubt 7. Does reverential fear suffice to invalidate a marriage? Reverential fear is that by which one fears to resist someone to whom one is subject, namely, a father, mother, grandfather, father-in-law, husband, king, lord, prelate, guardian, and curator, as commonly taught by the Doctors, along with Sanchez, *Loc. Cit.*, Number 4, and Bossuet, Chapter 10, Number 85, along with Pontificalis, Guttmann, Menoch, etc. Regarding the doubt, the first opinion, held by Abbot Navarrus, Immola, and other canonists, as cited by Sanchez, *Loc. Cit.*, Number 3, states that a small amount of reverential fear, if it is the principal cause of the marriage, invalidates it. The reason is that fear without which the marriage would not have taken place already removes free consent. The second opinion, which is the common and accepted one, held by Lessius, *Loc. Cit.*, Chapter 47, Doubt 6; Sanchez, Number 7, along with Soto, Palatine, Henry, and Sa, Bonaventure, Page 8, Number 6, along with Suarez, Valois, Molina, and Rebellino, and Bossuet, Chapter 10, Number 99, along with Layman, Conciliaria, Barbatus, Guttmann, Covarrubias, Villalpando, etc., and the decisions of the Roman Rota, state that pure reverence is not sufficient, but it is required that beatings, or threats, or the fear of some grave evil, such as hatred, prolonged indignation, etc., be added. The reason is that pure reverential fear is not, by itself, a grave fear, as is required to invalidate a contract; and this is expressed in the law *Interpositas*, Chapter *De Transact.*, where it is stated: "Not every fear is sufficient to rescind those things which have been concluded by consent, but it is necessary to prove a fear which contains the danger of death or the torment of the body." Furthermore, as Pontificalis rightly states, *Loc. Cit.*, Chapter 5, Number 4, that pure reverential fear, without the apprehension of some other grave evil, is not fear, but reverence, which does not induce the fear of any evil, but only a certain shame, which truly arises not from external causes, but from internal ones. 4057. — Doubt 8. Can the one who instilled the fear

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withdraw from a marriage contracted out of grave fear?

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The first opinion affirms, and Busemb. (as above), Sanch. l. 4, d. 15, n. 5, along with Soto, Henr. Man. Arrag. Pal. d. 2, p. 42, n. 2, along with Hurt. Ochag. Vill. et Gutt. Diana p. 3, tr. 4, r. 229, hold this view, and Bon. considers it probable (p. 8, n. 33). The reason is twofold: first, because in the contract of marriage, one party cannot be obligated while the other remains free; second, because the one who inspires fear is not bound to remain in the marriage, neither by reason of the contract nor by reason of the injury inflicted; not by reason of the contract, because no obligation arises from the contract itself; not by reason of the injury, because this injury is not considered so great that it cannot be remedied except through marriage. The second opinion denies this, and Nav. v. 21, n. 51, Bon. l. c., Pont. l. 4, c. 45, n. 3, along with Con. and Salm. de matr. c. 9, dub. unic. n. 47, along with Avers. Henriq. Trull. Leand. etc., hold this view. The reason is that no one should profit from their own crime. This opinion, along with the aforementioned reason, is strongly supported by c. Propositum 1, concerning one who is a duke, etc., where, when a certain man, being married, takes another wife, unaware of the prior marriage, and then the first wife dies, the Pope decreed that the man should be bound by the second marriage, if the woman wished, giving this reason: "It is not fitting that the aforementioned man should profit from your deceit." It cannot be said that the word "deceit" here refers to fear, not deceit, because in c. Contingat, concerning oaths, deceit and fear are equated. Indeed, Lugo de contract. d. 22, n. 149, v. Quarto, states that the laws consider the injury caused by fear to be greater than that caused by deceit; therefore, what is stated in the text concerning deceit should also, and perhaps even more so, be understood concerning fear. Therefore, although the one who inspires fear is not bound by the force of the contract, they remain bound by reason of the injury. Both opinions are probable, but the second seems more probable, especially if the fear cannot be proven, because then, when the Church compels the one who has suffered fear to cohabit, such a grave inconvenience cannot be remedied except through true marriage, and even more so if the one who suffered the fear is a woman, who, otherwise, would always bear some stigma. And Pal. l. c. agrees with this, stating that the first opinion only applies when the injury could be remedied in another way. 4058. — "It is said in the Eighth Order, that is, the sacred, or major, that if one does not accept it by compulsion, he invalidly contracts marriage, as is seen above concerning the Sacrament of Orders, and here, an impediment to the third party." 4059. — It is certain that the sacred order dissolves marriage, as is stated in c. de Diacono and c. Ex Litterarum. Those who are clerics or vowed, and in Extrav. Antiqua, concerning vows. But it is doubtful whether the sacred order dissolves marriage by divine law, or by ecclesiastical law?

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The first opinion, held by Major, Barb., and others (ap. Sanch. l. 7, d. 28, n. 9), states that it dissolves by divine law, because in c. un. de voto, in 6, the solemn vow of the sacred order is equated with a religious profession, which...

[*Latin ed. p. 197*]

By divine law, marriage is already annulled, according to the more probable opinion, which we have discussed in n. 1025. The second opinion, which is more common and probable, teaches that it is dissolved by ecclesiastical law; thus, D. Thomas states in *Summa Theologica*, 4th part, 37th question, 1st article: "But that an order impedes marriage, it has from the constitution of the Church." Bellarmine, *De Clericis*, book 1, chapter 18; Pope, *Extra*, book 7, chapter 22; Palatine, *Decretum*, 4th part, page 6, number 5; Cont. Tourn. *Tractatus de dispensationibus*, special part, chapter 8; Bonaventure, *Opera*, page 9, number 12; Holzmüller, number 487; Spotorius, number 45, with Scotus, Suarez, and Perez, and Sanchez, *Doctor Discipulorum*, book 1, chapter 12, with St. Bonaventure, Albertus Magnus, Soto, Cajetan, Victor, Palatine, etc. The reason is that an order does not, by itself, dissolve marriage, since the status of the order does not, by itself, contradict the conjugal state, as is evident in the Greek Church; therefore, an order dissolves marriage only by reason of the vow of chastity; but a vow does not dissolve marriage as a vow, because a vow only impedes marriage, but as a solemn vow; but solemnity is only by ecclesiastical law; therefore, only by ecclesiastical law does an order dissolve marriage. And therefore, the Pope can rightly grant a dispensation to those who are ordained, but not to priests, as stated in numbers 807 and 808. Although Cont. Tourn. in the aforementioned passage, probability 3, states that Benedict IX. formerly permitted Ramiro, a presbyter who had professed religion, to propagate the declining lineage of Aragon with legitimate children. How a solemn vow of clerics dissolves marriage, see the aforementioned numbers 808 and 4060. — "It is said in the Ninth Canon: 'A bond, because of which, as long as one is bound to a spouse who is still living, he invalidly contracts marriage with another, although licitly, and without sin, if he is morally certain of the death of the spouse: but if the spouse afterwards appears, he is bound to return to him, dismissing the latter.' See Bonaventure, *Opera*, page 40." (see the aforementioned numbers 904 and 903.) 4061. — "It is said in the Tenth Canon: 'Honesty, that is, the honesty of public decency, by reason of which no one can contract marriage with relatives of one who has contracted marriage, whether by betrothal or by a valid marriage. Indeed, before Trent, and by ancient law, this impediment dissolved marriage between the betrothed and the relatives of the betrothed up to the fourth degree, and arises from betrothals of any kind, even invalid ones (except for lack of consent); but by the new law of Trent, it does not arise if the betrothals are invalid, and it only dissolves up to the first degree if

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it is from betrothals; but up to the fourth degree, if it follows from a valid marriage.' (Even from a valid marriage, no impediment of public decency arises (unless the nullity is due to lack of consent), as noted by Crocius, *Tractatus de Matrimonio*, book 6, page 3, number 681, and P. Zacharias, *ibid*, according to the opinion of the Sacred Congregation and Cardinal Lambertini.) 'See Bonaventure, *Opera*, page 44; Sanchez, *Doctor Discipulorum*, book 7, question 68; Fillon, volume 40, page 2, chapter 6. Dian also notes that it does not arise from betrothals that have been mutually dissolved by consent, page 3, volume 4, paragraph 222, from Pope, and others 3, against Sanchez.'" (Nor does it arise from uncertain betrothals, as...)

[*Latin ed. p. 198*]

In the first canon of the Council of Trent, concerning betrothals, it is stated that betrothals are invalid if they were contracted with an uncertain person, such as one of the daughters of Peter. This is because, until the condition is fulfilled, there is no valid betrothal (page 9, title 6, rule 25, from Opatov). As Sanchez states (book 7, chapter 69, number 4) and Salmeron agrees (on marriage, chapter 42, page 7, number 94), with Balsamo and others, and as is certain from the declaration of Boniface VIII, cited in Contra Tournensis, in the treatise on dispensations, part 4, chapter 8, number 3, "he who contracts betrothals with a woman under a condition, if afterward, before the condition is fulfilled, he contracts betrothals with another, a closer relative of the first, by words indicating present intention, must remain with the second."

However, an impediment to marriage can arise from an invalid marriage (unless it is invalid due to a lack of consent, page 9, title 6, rule 50), as declared by Pope Pius V, and also from clandestine marriages (rule 53, from Pontifical sources). Hurtado, Pereira, and others contradict Sanchez and Prapotentia (4062).

Let us briefly discuss the questions that the author here barely mentions. Question 4: Does an impediment to public decency arise from a marriage that is null? It should be noted that if the nullity is due to a reason other than a lack of consent, it is certain that an impediment arises from a marriage that is null, because, as Sanchez states (book 7, chapter 70, number 5), the ancient law, as corrected by the Council of Trent, holds that there is an impediment. Pontifical sources (book 7, chapter 35, numbers 3 and 5), Palatine sources (book 4, page 40, number 5), Balsamo (page 44, number 10), and Salmeron (on marriage, chapter 42, page 7, number 83), all agree. It is doubtful whether an impediment arises if the nullity is due to a lack of consent. Sanchez (book 7, chapter 68, number 44), Pontifical sources (chapter 36, number 40), Sylvestri, Henry, and Leandri, cited by Salmeron (page 7, number 84), argue that if the defect is hidden, an impediment arises from invalid betrothals due to any hidden defect, if, on the outside,

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they are considered valid, because, as they say, this impediment was introduced by the Church to avoid indecency, which already appears if the betrothals were publicly held as valid. However, Palatine sources (page 40, number 7), Balsamo (page 44, number 3), Contra Tournensis (cited above), and Note 2 of the Council (page 329, number 3), and Salmeron (page 85), with the Dictionaries of Controversies, Hurtado, Ledwich, and others, argue more plausibly that no impediment arises from a marriage that is null due to a lack of consent, and from betrothals that are null due to any defect (specifically, a lack of consent). For, concerning betrothals, the Council of Trent vaguely stated that betrothals, for any reason invalid, do not create an impediment, which should be understood whether the defect is public or hidden. Concerning marriage, in the first canon of the Council of Trent, concerning betrothals, it was universally held that no impediment arises from a marriage that is null due to a lack of consent. And the Sacred Congregation of Cardinals, as testified by Barbieri and Farina, cited by Salmeron (page 85), confirms this (4063).

Question 2: Does an impediment arise from betrothals that have been dissolved by mutual consent, or by another just cause? Pontifical sources (book 7, chapter 35, number 9) and Palatine sources (page 40, number 9), with Hurtado, Guttieri, and Farina, from a decree of the Sacred Congregation, state that betrothals that are dissolved by consent are invalid.

[*Latin ed. p. 199*]

Certain authors, as affirmed by Sanchez in book 7, title 78, number 20; against Tournhem, in the cited place, volume 1, page 330, number 5; and by Salmeron, in "De Matrimonio," chapter 12, page 7, number 88, along with Soto, Layman, and Bonaventure, and so it must be held (as Crocius rightly states in book 6, page 3, number 683), due to the declaration of the Holy See, approved by Pope Alexander VII on July 6, 1658, which is also cited by Pitt in "De Matrimonio," number 4397, where the Pontiff forbade that this resolution be questioned again. And the reason is that in the Council of Trent, session 24, chapter 3, it is said that valid betrothals dissolve the marriage only up to the first degree; therefore, since an impediment has already arisen from valid betrothals, it cannot be removed by the will of the betrothed, or by any subsequent cause.

1064. — Question 3: Does this impediment arise from a marriage that is null, because it was clandestine? The first opinion denies this, and Sanchez, in book 7, title 70, number 13, along with Paludanus, Navarrelius, etc., and the Council and Dictionary of Salmeron, in the same place, number 86, hold this view, and Sporer considers it probable, in number 66. The reason is that, as they say, Boniface VIII, in chapters 4 and 8 "De Sponsis," defined that no impediment to public decency arises from a marriage that is null due to a lack of consent; but such a marriage, they say, is truly null because of the lack of consent, since it lacks the consent that the Church requires;

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therefore, it does not create an impediment. However, the second opinion, which is truer, affirms this, and it is held by Pontius, in book 7, chapter 36, number 5; Paludanus, page 40, number 3; Pignatelli, in book 4, consuetudines, 15, number 2; the Council, page 330, number 4; against Tournhem, in the cited place, volume 1; Holzmayer, number 602; Roncaglia, page 184, question 2, response 4; and Salmeron, in the same place, at the end, along with Layman, Bonaventure, and Aversio. The reason is that, according to ancient law, from chapter 1, section 6, "De Sponsis" (which is still in force, as declared by Pope Pius V, in Salmeron, cited, number 86), an impediment is excused only from a marriage that is null directly due to a lack of consent, but not from another cause. And the Holy Congregation of Cardinals declared this, as Holzmayer, in the cited place, and Gallicanus, chapter 3, ad sessionem 24, of the Council of Trent, report, where it was said: "Assuming the declaration by the constitution of Pope Pius V regarding this defect, the Congregation considered that an impediment to public decency arises from betrothals made with words indicating a present contract, even if the form of the decree of the Council of Trent, session 24, chapter 4, is omitted, namely, a clandestine marriage without a priest and witnesses."

It should be noted here what is stated in chapter 1, section 6, "De Sponsis," namely, that a valid marriage that is invalid does not create an impediment to prior betrothals. Therefore, if someone, after validly betrothing oneself to one woman, takes her sister, before having relations with the second, one can and must betroth oneself to the first, since the marriage was null.

1065. — "It is said that age matters; because, according to Church law, the age of 14 is required for a man, and 12 for a woman; unless marriage supplements this age, that is, if there is also the capacity to consent, and

[*Latin ed. p. 200*]

Potenza, concerning unions, is a matter for prudent judgment. Laym. c. 12, n. 1, ex. c. De iis, and c. ult. de despons. impub. (1). 4066. — It is certain that the marriage of the impuberal [those not yet of age] is null, as is stated in c. 6, 10, and 14, de despons. impub. And this is so even if only a few days remain until the age of puberty, as commonly taught by Sanch. l. 7, dist. 104, n. 1, and 3, Pont. l. 7, c. 65, n. 1, Pal. d. 4, p. 14, §. 4, n. 1, Escob. l. 27, n. 525, and others (contrary to a few), as is clearly demonstrated in the aforementioned c. 2 and c. 14. From the letters, in the same title, where it is written: "Until the boy completes his fourteenth year, he must wait." However, before this prescribed age, it is commonly held that marriage is not null by natural law, but only by ecclesiastical law; Sanch. n. 9. Contin. Tourn. tr. de Dispens. in spec. part. 1, cap. 14, v. Regarding the impuberal, Pont. and Pal. l. c., and others, extensively. They say that the canons hold that a marriage is valid if malice [i.e., deceit] supplements the age, as is stated in c. De illis 9, and c. Puberes, in the same title, where it is written:

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"It is certain that a person is considered an adult when they exhibit the characteristics of puberty and are already capable of procreation." However, D. Th. in 4, dist. 36, q. un., art. 5, and Sanch. l. 7, d. 104, n. 21, along with Abb. Sylv. Sot. Ang. Cov. Tab. etc., teach that the mere ability to procreate is not sufficient for the validity of marriage, as Host. Præp. Henr. etc. state ibid. n. 20, but that discretion is also required to understand the force of conjugal consent; for since such a bond is perpetual, perfect consent is required, as is inferred from c. fin. de desp. impub., where this malice [deceit] is called prudence. Furthermore, the Doctors give other signs by which it may be judged whether an impuberal person can procreate, for example, if the boy has already had intercourse, or if he is already capable of emitting semen, or if the girl has already had menstruation. However, these signs are not admitted unless the betrothed are close to puberty, as is stated in the aforementioned chapter. Concerning in what age one should be considered close to puberty, some, apud Sanch. n. 37, say if three days remain, others six months, others three years, Pal. l. c., if one year remains; Sanch. verò n. 40, and Pont. n. 5, say that this should be left to the judgment of the prudent, who must consider the quality of the person, the temperament of the region, etc. Furthermore, Cont. Tourn. in the aforementioned place, states: "They believe that if it is certainly known that the marriage has been consummated, for example, if the girl has conceived, it would be unjust to separate them." The same Cont. Tourn. adds ibid. v.: "This rule, since the Pope can grant dispensations with princes, if it is ever expedient for the marriage of an impuberal person for the sake of peace, as is stated in c. Ubi 2, de despons. impub., in which the impuberal are forbidden from marriage, unless perhaps some urgent necessity intervenes, so that such a union may be tolerated for the sake of peace." 4067. — It is asked here, if a boy, having reached the age of puberty, is not able to have intercourse, is there any marriage? Abb. and Veracur. apud (1) Cod. Civ. art. 144, state that for a marriage to be contracted, the man must be 18 years old, and the girl must be 18 years old.

[*Latin ed. p. 201*]

Sanch., book 7, title 104, paragraph 14: This is because in chapter "Puberes," concerning the marriage of the unmarried, it is stated that those who are capable of generating [offspring] are considered to have reached puberty; therefore, it follows that those who are not capable of generating are more properly called "unmarried," and are unfit for marriage. However, commonly, Pal., book 3, paragraph 14, section 4, paragraph 5; Escob., book 27, paragraph 541; Sanch., in the same book, paragraph 15, along with Sylv., Host., Præp., Nav., Cov., Henr., etc., deny this. The reason is that in law, only the age of puberty is required for marriage; although it is stipulated in the aforementioned text and others that marriage between the unmarried is valid if they have the capacity to generate, nevertheless, by no

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law is marriage considered null between those who have reached puberty if they lack the capacity to generate; in such a case, the impotence is rather to be considered temporary. Therefore, some say that a period of two or three years should be allowed for them to experience [fertility]; but commonly, Pal., paragraph 6; Pont., book 7, chapter 65, paragraph 4; Escob., paragraph 543, along with Henr., Sylv., and Præp., and Sanch., paragraph 18, along with Abb., Host., Ang., Tab., etc., state that in a man, one should wait until the age of 18, and in a woman, until the age of 14, because at that time, nature is in perfect vigor. Furthermore, the rule of three years does not apply in chapter "Laudabilem," concerning frigidity and malice; for that rule applies when impotence arises from frigidity, or some other impediment, and not when it may arise from the weakness of youth. However, the marriage of the elderly, even if they are decrepit, is valid, provided that they can, at least through medical means, have intercourse; thus, commonly, Sanch., book 6, title 92, paragraphs 49 and 20, and Salmant., on marriage, chapter 12, paragraph 40, paragraph 426, along with D. Thom. and others, state this throughout. Conversely, it should be said (contrary to Nav. and others), if they are entirely impotent, as Sanch., paragraph 23, along with Ang., Sylv., Lop., Scot., Rich., and Boss., chapter 7, paragraphs 190 and 4068, state.

"It is said in XII. Affinis: Affinity is the relationship between persons arising from carnal union, whether lawful or unlawful. Both, at least in ecclesiastical law, invalidate marriage: the former up to the 4th degree inclusive, the latter by new law, only up to the 2nd degree. Indeed, if the marriage precedes: for if it follows, e.g., if Titus learns that his wife's relative is in the 2nd degree, it does not invalidate the marriage; although the one who committed the sin cannot demand [restitution], but only offer it. Furthermore, the degrees and lines of affinity are taken, as in consanguinity, so that he who is a consanguineous relative of the wife in the first degree, whether in the direct or collateral line, is an affine to the husband in the same degree of the direct or collateral line. Finally, all affinity arising from affinity is removed by the Lateran Council. See Laym. and Bon., page 12. Therefore, it is resolved: 4069. - "4. He who has committed fornication with the sister of his bride, neither of whom can validly marry, without dispensation, indeed, not even with their niece or mother-in-law." (Similarly, the Sacred Congregation judged, as reported by P. Zach., in Croiæ, book 6, page 3, in reference to paragraph 693, that marriage can be contracted between a stepmother and the wife of her stepson.)

[*Latin ed. p. 202*]

If anyone, after a dispensation, again recognizes the same sister of the bride, he does not require a new dispensation, see n. 1440. 2. One may marry a relative of one's brother, even in the first degree; for example, two brothers can marry two sisters, indeed, a father and son can marry

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a mother and daughter. Laym. Bonac. l. c. 3. Titius can successively marry Titia, and Berta, who were the wives of Cajes, and of the brothers Sempronius. 4. Titius, who had married the sister of Cajes, can, after the death of Cajes and of his sister, marry Berta, the wife of Cajes. Therefore, this impediment of affinity is only incurred when a man has relations with a relative of his wife, or a wife with a relative of her husband; hence, it is incurred least of all, if a union is had with relatives of the husband by relatives of the wife, or conversely. It should be noted, however, that according to ancient law, this impediment extended up to the seventh degree, according to c. Nullum, and c. Equaliter, caus. 35, q. 3. But subsequently, it was restricted to the fourth degree in c. Non debet, de consang. et affin. tam ex copula licita, quam illicita. Nem ex Trid. sess. 24, c. 4. The affinity resulting from an illicit union is restricted only to the second degree. 4070. — Thus, regarding the impediment of affinity incurred before marriage. After marriage, however, if a spouse has relations with a relative of the other spouse, then the impediment to marriage is incurred, as the Doctors commonly say, provided that the incest is with relatives of the spouse in the first or second degree, as is stated in c. Si quis 4, concerning him who knowingly, etc., where: "If anyone has knowingly committed fornication with his stepdaughter, he can neither ask for her in marriage, nor ever have her as a wife." Therefore, the impediment to incest in the first degree of affinity is prescribed. That it extends only to the second degree is stated in the declaration of Gregory XIII, in Boss. l. 2, c. 5, n. 24, where it is said: "The Most Holy Pope Gregory XIII, by the opinion of the Congregation, declared through this decree (that is, the Council) that the impediment of affinity also supervening after the marriage contract is considered to be removed, the Council having removed the third and fourth degrees, therefore, in all cases." 4071. — Question I. Whether a wife, known to a relative of the husband, forced by grave fear, is deprived of the right to petition for marriage. The first opinion affirms this, and this is held by Pont. l. 10, c. 47, n. 6, and Sanch. l. 9, d. 31, n. 4, with Sylv. Rich. Led. Graff., etc. The reason is that it clearly seems to follow from c. Sacris 5, concerning those who, by force, etc., where, when it is doubtful whether a person communicating with an excommunicated person, because of fear, incurs excommunication, Innocent III said: "Although fear mitigates the guilt, nevertheless, since it does not entirely exclude it, since for no fear should anyone incur a mortal sin, we believe that the stain of excommunication is incurred. Nor is the interpretation of some valid, that it should be understood of..."

[*Latin ed. p. 203*]

The first opinion, which is less common, holds that even a slight fear excuses [from the impediment], because the Pontiff clearly understands that even a grave fear excuses, as is stated, without any fear, etc. The second opinion, which is more common and probable, denies this. This view is

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held by Bonaventure in *Doctorum Communium*, part 4, question 2, chapter 5, number 5, with Navar and Elbel in *De Matrimonii Impedimentis*, page 426, number 232, with Tamburello and Isla, and is considered probable by Lamy in *Moralis Ecclesiastica*, book 5, treatise 40, page 3, chapter 4, number 14; Paleario in *Tractatus de Matrimonii Impedimentis*, book 3, part 4, section 6, number 3; Salmeron in *De Matrimonii Impedimentis*, chapter 15, page 3, number 28, with Gabriel, Antoninus of Florence, Soto, and Villalobos, as cited by Bossuet in volume 2, chapter 5, number 152. The reason is that, just as fear excuses from ecclesiastical law, so too does it excuse from the penalty imposed by that law. The text cited above does not contradict this, because (as the aforementioned authors explain with Soto, Barbatus, and Victorius, as cited by Bossuet in the aforementioned place) that text refers to a fear instilled in contempt of excommunication. For, outside of contempt, a grave fear certainly excuses from ecclesiastical law, and also from excommunication, in the case where the act performed out of fear is prohibited solely by ecclesiastical law, as is clear to all, as discussed in the aforementioned work, book 7, number 46, 4072.

Question II: Does ignorance excuse from incurring this impediment to marriage? Here, we must distinguish between three types of ignorance: ignorance of the law, ignorance of the fact, and ignorance of the penalty.

Firstly, if there is ignorance of the law, namely, if a man approaches a woman who is a relative of his wife, unaware that human law prohibits this, then, according to Cordier and Manassès in *Tractatus de Matrimonii Impedimentis*, book 9, part 32, number 46, he incurs the impediment. The same should be held by Soto, Turrecremata, Abbod, Ledo, and others, as cited by Sanchez in the aforementioned place, number 46, who hold that all ecclesiastical penalties, except for excommunication, are incurred even by the ignorant of the positive law, provided that he knows that the act is forbidden by natural law. The reason is that the obligation to incur the penalty does not arise from the knowledge of the deliquent, but from the will of the legislator, and that ignorance of the fact excuses from the penalty, but not ignorance of the law, as stated in the *Reginensis*, book 13, jurisprudence, section 6. However, it is more probable and commonly taught that the impediment is not incurred, as taught by Navar in chapter 16, number 34; Sugerius in *Tractatus de Matrimonii Impedimentis*, book 3, part 77, article 8; Sanchez in the aforementioned place, number 47; Wigand in *Tractatus de Matrimonii Impedimentis*, book 16, number 100; and Salmeron in *De Matrimonii Impedimentis*, chapter 15, page 3, number 30, with Pereira, Dionysius, Gabriel, and Bonaventure in *Doctorum Communium*, book 4, part 2, number 6, with Ledesma, Henricus, and the *Reginensis*. The reason is that, since the penalty is imposed by human law, he who acts against that law with ignorance is excused from the transgression of that law, just as he is excused from the penalty; and thus, this answers the first reason given in opposition to the opinion. However, it is answered to the

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second reason that this rule applies only to the external forum, not to the internal forum, 4073.

Secondly, if there is ignorance of the fact, namely, if a man knows the ecclesiastical law prohibiting marriage, but does not know that the woman to whom he is approaching is a relative of his wife, then it is commonly held that the impediment is not incurred, as taught by Sanchez in the aforementioned place, number 47 (contra Ovarius); Bonaventure in *Doctorum Communium*, book 4, part 2, number 6; Paleario in *Tractatus de Matrimonii Impedimentis*, book 3, part 4, section 6, article 3; Bonaventure in *Doctorum Communium*, book 10, chapter 10, section 6, number 9; Bossuet in volume 2, chapter 5, number 454; Wigand in *Tractatus de Matrimonii Impedimentis*, book 16, number 100; and Salmeron.

[*Latin ed. p. 204*]

Citing numbers 30 and others throughout, the reason is that, since the deprivation of the right to petition is a penalty for incest, when incest is absent, the penalty also ceases. This must be stated, even if the ignorance is gross, as taught by Sanch. numbers 36 and 47, Nav. chapter 27, number 42, Pont. book 40, chapter 6, number 40, and Boss. book, chapter, number 160, along with Pal., Bon., Con., Hurt., etc. (contrary to Toletum and another author). The reason is evident from the cited text, "If anyone...," where this impediment is imposed only on the knowingly sinful, according to the words related in number 4070. However, Sanch. number 29 and Boss. number 162, along with Suar., Bon., Reg., Diana, etc., object (contrary to Hurt., Vasq., Sylv., etc.), unless the ignorance is so gross that it appears to be a deliberate disregard; for such ignorance is equated to the most extreme form of deceit, according to book 3, section "Generales," regarding deceit, etc. But does affected ignorance excuse? See what is said regarding censure, book 7, number 48, 1074. Thirdly, if ignorance of the penalty exists, that is, if one has knowledge of the law and the facts, but is unaware of the prohibition to petition, it is doubtful whether this ignorance would be an excuse. The first opinion denies this, and Sanch. book 9, title 32, number 50, Salm. de matr. chapter 15, page 3, number 30, at the end, and Croio book 6, page 3, number 376, along with Pont. and Avers., hold this view. The reason is that this penalty is more like an impediment or disability than a penalty. The second opinion, however, is quite probable and affirms this, and it is held by Bon. question 4, page 2, number 6, response 2, Wigandt treatise 46, number 100, note, Pal. treatise 4, title 1, page 47, number 8, Boss. volume 2, chapter 5, number 479, Tamb. Dec. book 7, chapter 4, section 2, number 3, Elbel page 426, number 233, Sporer ibid. title, number 84, along with Portell. and Diana page 3, treatise 5, response 42, along with Con. and Durand, and they consider it probable that Sanch. in the cited passage, number 21 and 50, and Laym. apud Croio in the cited passage, hold this

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view. The reason given by these authors is that they do not consider this to be a mere disability, but a true penalty in vindication of incest; and they prove this by the fact that if this were not a penalty, the affinity would be contracted even if incest occurred without sin, or even if the union were by force and fear: but these very opponents deny this. It may be objected that no penalty is incurred without at least a declaratory sentence; but no one says that a sentence is required to incur this impediment, therefore it is not a penalty. But it is answered that a sentence is required only when the crime can easily be proven, not when it is of the most difficult proof; so that, if a sentence were required, the penalty would be almost useless, as taught by Suar. and Villal. apud Boss. number 26, and this would be the case in our situation, where incest is most often hidden and cannot be proven. And since it is highly probable that the ignorant do not incur penalties imposed by ecclesiastical law when they are extraordinary, that is, which cannot even be foreseen in a confused manner, as taught by Nav. chapter 27, number 274, and chapter 23, number 47, along with Cajet., Sylv., and Ang. S. Anton. 3, page, title 24, chapter 33, near the end, as well as Host., Con., Sayr., Durand, Phil., Man., etc. apud Boss. book, chapter, number 473, it is therefore quite probable that...

[*Latin ed. p. 205*]

One may incur this penalty from the ignorant, which certainly appears extraordinary, since it cannot be foreseen by itself.

Query III: Is it required that the union be consummated on both sides in order to establish affinity? It is certainly required that the man contribute his seed; but is it also required that the woman contribute her seed? Some, namely Pont., l. 9, c. 20, n. 1; Pal., d. 4, p. 8, n. 3; Croiae, l. 6, p. 3, n. 696; Sanch., l. 7, c. 64, n. 21, with Arm., Tab.; Henr. Gab.; etc.; and Bon., q. 3, p. 43, n. 12, with Palud., Sylv., and Soto, deny this. The reason is that, according to the opinion of many, the female seed is not necessary for generation (see n. 918). However, another opinion, which is also probable, affirms that it is required, and this is held by St. Bonaventure, Innocent, Archid., Lopez, Graff., Cenedo, etc., as cited by Sanch., n. 20, and which Sanch. himself calls probable, ibid.; and Pal., d., n. 3; and Ronc., de matr., q. 4, c. 3, q. 9; Elbel, p. 425, n. 227, with Hurt. and Mast.; and Salm., de matr., c. 4, p. 1, n. 5, with Sylv., Trull., and Durand; also Avers., Diana, and Krimer, as cited by Croiae, d., n. 696. The reason is that, according to the opinion of many (see the aforementioned n. 918), the female seed is also required for generation; and (and this reason is more forceful) affinity is not contracted unless the two become one flesh: for they are not one flesh unless the seeds are mingled. This opinion is strongly supported by the authority of St. Thomas, whose words we quoted in n. 1036. Here, he expressly states that both the man's and the woman's seed are required in order for affinity to be contracted. However, Sanch., l. 8, d. 6, n. 48; Croiae, d., n. 696; and Elbel, p. 427, n.

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236, rightly point out that, in cases of doubt, the perfect union should be presumed, because it is prudently presumed that this has occurred, given the commonly occurring circumstances: therefore, if a man has intercourse, and doubts whether he has emitted seed, the union is presumed to be perfect. And so, Avers., Diana, Krimer, and Gobat, as cited by Croiae, say that the emission of the woman's seed should always be presumed, when she has felt great pleasure during intercourse, even if she has not noticed the emission. Indeed, Elbel, l.c., with Sanch., Cleric., and others, says that, in external matters, where intercourse is established, it should always be declared that affinity has been contracted, and so should be judged in internal matters, which must conform to the presumption of external matters, unless it is certain that this presumption is false.

Query IV: Who can dispense in this impediment? Some say that only the Pope can, if this penalty has been imposed by him; thus, Cov., Graff., and Matien, as cited by Sanch., l. 8, c. 12, n. 10. Others say that the Bishop can also dispense, but only in cases of necessity, as Sylv., Lop., and Margaret, as cited by the same Sanch., n. 14. Others, however, most commonly teach that the Bishop can always and absolutely dispense; thus, Laym., l. 5, tr. 10, p. 3, c. 1, n. 15; Pal., d. 3, p. 4, §. 6, n. 5; Merbes., t. 2, p. 495, v.; but Wig., t. 16, n. 400, r. 3; Tamb., l. 7, c. 4, §. 2, n. 3; Elbel, p. 426, n. 254, with

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Anacl. Boss. c. 5. n. 14. with Henry and Vill. and Sanch. d. d. 12. n. 13. with Palud. Soto. Arm. Sa, Vega, Man. etc. The reason is that, although the Bishop cannot do this by the disposition of the law, he can nevertheless do so by reason of custom. This power to dispense can be delegated to another, not only in particular cases, but also in general; see what is said in n. 1425. Question IV. Furthermore, all confessors who are Regular Canons of the Mendicant Orders, appointed by the Provincial for this purpose, can also dispense in this impediment, by virtue of several privileges, namely those of Martin V. with the declaration of Julius II., as Sanch. states in book 8, title 16, n. 8. Spor. n. 483. Elbel p. 382. n. 74. Pont. book 8, chapter 13, at the end, and Salm. de matr. chapter 14, p. 1. n. 14. with Guti. Avers. and Candido (contra Conc. p. 245. n. 10., where he says that all these privileges are entirely fictitious, since he himself did not find them in the Bullarium; also from the privilege of St. Pius V., by the oracle of living voice, as Wig. and Boss. state in the aforementioned book and chapter, with Laym. Reb. etc. The same privilege grants this power to confessors of the Society of Jesus, as Palud. states in the aforementioned passage. But must the Mendicants, in order to be able to dispense in the aforementioned impediment by virtue of their privileges, have a special license from their General or Provincial? Some say that no license is required, because in the privileges granted to the Benedictines and the Minorites, this very power is absolutely granted. Others assert, as Sanch. states in book 8, title 16, n.

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3. Palud. book 4, last page, §. 4. n. 48. also Vill. Rodr. Avers. etc. Salm. de matr. chapter 14, p. 1. n. 15., that (as these authors say) in the privileges, the appointment by the Provincial is absolutely required. Others, as Salm. states ibid. n. 16. with Leandro, and Joan. de la Crux, say that a license from the Superior is indeed required, but that it is sufficient if it is obtained from the Prelate of the monastery, because the privilege granted to the Benedictines of Valladolid was granted by Martin V. and Julius II. to the Prior of the monastery. 1077. — Note here the last point: Those who knowingly enter into marriage with an impediment of consanguinity or affinity incur excommunication by the very act, as is stated in Clement. un. de consanguin. where it is also prescribed that Ordinaries should take care to prevent this, until they have made amends. And the same is stated there regarding religious, nuns, and clerics who are validly ordained and who enter into marriage (who must also be denounced according to the edict of the General Inquisition, ap. Potest. p. 329.), and regarding lay people who marry nuns. Since this penalty is severe, Croiæ rightly states in book 6, p. 3. n. 807. with Pontio, Spor. and Avers., that it does not extend to other impediments. 1078. — "It is said XIII. If clandestine: because the Council of Trent declares marriages invalid of those who contract them in any other way than before a parish priest or another priest with the license of the priest himself, or of the Ordinary, and with at least two witnesses; and it desires that those who have acted contrary to this should be severely punished, or even excommunicated. 1079. — For a better understanding of the matter, it should be noted that there are two ways.

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Marriage may be clandestine, either when it is contracted maliciously without proper notification, in which case it is only illicit; or when it is contracted not before a parish priest and witnesses, and in this case, a distinction must be made: for concerning non-believers, or believers who reside in lands of non-believers, or where the Council of Trent is not accepted, such a marriage is valid, since the law, even if not accepted for at least ten years, does not apply, as say Sanchez, book 3, title 48, number 4; Pontius, book 5, chapter 7, number 4; Bonaventure, question 2, page 7, number 4; and Salmeron, on marriage, chapter 8, page 2, number 44, with Perez, Dic. Av. Led. and Rodriguez. Concerning believers, however, who are in a place where the Council of Trent is accepted, the marriage would be null, even in a case of necessity; so generally say Sanchez, book 3, title 47, number 4; Pontius, book 5, chapter 6, number 2; Palafox, page 13, section 8, number 9; and Salmeron, ibid., number 43, with Laym, Council of Corn, Henry, etc., generally, contrary to Soto and a few others; who believe that there may sometimes be a case (although rare) in which a marriage without a priest would be valid. But these, say Salmeron, book, chapter, number 44 and 45, are not to be heard, because necessity cannot

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make valid those whom the Council of Trent has declared entirely invalid, as is stated in session 24, chapter 4. And this applies even if the marriage was contracted with invincible ignorance; Salmeron, ibid., number 46, with the common opinion. However, Laym, chapter 4, number 7; Council of d. 27, title 4, number 44; Croix, book 6, page 3, number 778, with Bellarmine and the common opinion (against Lessius); also Vega, Tanner, Dic. and Verac, with them; Salmeron, ibid., number 47, say that if there is no pastor in a certain town, or another person performing his duties, then a marriage contracted with witnesses without a priest is valid. And this is considered probable by Salmeron, ibid., because of a certain declaration by Clement VIII, apud Coninok, because then either there is no parish there, or the promulgation of the Council of Trent does not last there, although it may have been; for when a parish is destroyed, the promulgation is considered destroyed as far as its value is concerned (1). Likewise, a marriage celebrated without a priest in lands of non-believers by believers who are prisoners, or merchants residing there as guests, is valid and licit; Salmeron, ibid., number 22, with Sanchez, Bonaventure, etc. It should also be noted that clandestine marriages today do not even have the validity of betrothals, as declared by the Sacred Congregation apud Fagnanus in chapter Ad audiendam, 1080. However, travelers, if they contract marriage in a place where the Council of Trent is accepted, a marriage without a priest and witnesses is null; because even travelers are bound by the laws of the place concerning contracts; so generally say Sanchez, book 3, title 48, number 26; Pontius, book 5, chapter 8, number 4; Bonaventure, question 2, page 7, number 5; Salmeron, on marriage, chapter 8, page 2, number 48, with Palafox, Council, Dic. (1) It is now established from several resolutions of the Sacred Congregation of Cardinals that marriages contracted without the presence of a priest are valid and licit, when the contracting parties cannot readily or only with great difficulty or danger obtain the presence of a legitimate superior, provided that at least two witnesses, if possible, are present. In such a case, the faithful should be encouraged to seek a blessing for the marriage from a priest if one is available.

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"Regarding the following, from chapter [reference to a canon], concerning jurisdiction in marriage, it is stated that laws and customs of the place must be observed in contracts. However, if someone were to move to a place where the Tridentine practices are not followed, and there contracts a marriage there without a parish priest and witnesses, then there is no marriage; conversely, if someone were to truly move their domicile to such a place, even with the intention of contracting a marriage there without a parish priest and witnesses, it was declared by the Sacred Congregation on August 14, 1627. And this declaration (whatever Sanchez and others may say apud Salm, ibid., no. 20), must be strictly adhered to, as stated by

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Salm, ibid., no. 21, and Croix, book 6, page 6, no. 712, and others, since it was approved by Urban VIII for the entire Church, as it was stated there: that it should be defined by whatever judges. And the decree of Urban was again confirmed by Benedict XIV in a letter, published a few weeks ago, on March 19, in the year 4758, where the decree of Urban is extensively cited; see in the Bullarium of Benedict XIV, 1084.

1. By 'parish priest' is understood he who has ordinary jurisdiction over the contracting parties, namely, he who has the domicile and residence within his parish;

* (The term 'parish priest' commonly refers to the parish priest of the domicile, not of the origin; thus, Sanchez, book 3, chapter 23, no. 7, Pont., book 5, chapter 43, § 4, no. 2, Salm, ibid., page 3, no. 25, and Benedict XIV, Note 33, no. 6, with Barb. Perez, etc., from the declaration of the Sacred Congregation of November 48, 1707.) (1)

2. Also, a Bishop, or his Vicar within his diocese, (as Sanchez, book 3, chapter 28, no. 48, Pont., book 5, chapter 44, no. 4, Pal., book 2, page 43, § 41, no. 3, and Salm, de matr., chapter 8, page 4, no. 55, with others (contrary to some), from the Roman chapter on appeals, chapter 6, and chapter 2, on customs, chapter 6. And this is so even if the Bishop prohibits his Vicar from doing so, according to the declaration of the Sacred Congregation cited by P. Zacharia in Croix, book 6, page 3, no. 725. For the Bishop cannot prohibit a parish priest, nor his Vicar, from assisting at marriages, as he has declared elsewhere, according to the Sacred Congregation apud Croix, ibid. The same is said of Vicars of Chapters when the See is vacant, and of Abbots who have quasi-episcopal jurisdiction over their subjects.)

3. As well as the Pope; also, Chapters when the See is vacant, Cardinals in the churches of their title, Legates in their province. Even an excommunicated person, or one who is not a priest, is sufficient.

* (Within the year in which he is to receive the priesthood, from chapter 'Concerning elections,' chapter 6. Therefore, he would validly, and even licitly, assist, as Sanchez, book 3, chapter 20, no. 3, Pont., book 5, chapter 47, no. 4, Pal., page 43, § 40, no. 2, and Salm, ibid., no. 40 and 45, with Aversa, Gabr., and Leand., contrary to (1). Since properly called parish priests are scarcely found in Holland, but Catholics there are subject to the direction of missionaries, it was doubted whether the faithful should be bound to their domicile's pastor for the validity of marriage, or whether they could validly contract marriage before any pastor of the district; therefore, Pope Pius VII, on May 17, 1801, declared: The proper parish priest of Catholics residing in Holland, and those who wish to contract marriage among themselves there, is the pastor or co-pastor of that city or place in which one of the contracting parties has a home or quasi-domicile, and therefore they can validly be joined in marriage only before him or another priest with his

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Few; and others, with the decree of the Sacred Congregation [S. C.], promulgated in Pistoia, number 406, concerning marriages, dated March 12, 1693. And this, even after a year, by another decree of the Sacred Congregation, March 12, 1583, found in Bossuet, volume 4, chapter 4, number 99. The parish priest, who is able to assist, can also grant permission to another priest to assist, as stated in the Council of Trent, session 24, chapter 1: "If a parish priest, or another priest with the permission of the parish priest or Ordinary, is present." Furthermore, it should be noted that the parish priest can assist at the marriage of his parishioner, even outside the parish, and even against the will of the parish priest of that place, as Fagnan writes, volume 4, in the chapter "Concerning clandestine marriages," numbers 36 and 40, based on several decrees of the Sacred Congregation. It is not required that the priest be, in fact, a parish priest; it is sufficient if he holds at least a titular position, so that, by common error, he is considered a parish priest, and is not an intruder without any title. See Bonaventure, question 2, page 8 (Whether common error is sufficient? See the aforementioned, volume 6, number 572, see "Major Doubt").

4082. Therefore, a parish priest who is excommunicated, even if he is to be avoided, irregular, and suspended, validly assists at a marriage, because there he does not exercise jurisdiction, but only assists as a qualified witness, who can testify to the marriage; so commonly stated by Sanchez, book 3, chapter 21, number 4; Pontius, book 5, chapter 17, number 6; Barbatus, all 32, number 90; Bossuet, chapter 4, number 85; Bonaventure, page 8, number 22; and Salmeron, "De Matrimonio," chapter 8, page 4, number 46, with Palafox, Council of Led, Aversa, and Henry (against a few). And the same is stated by Fagnan, volume 5, in the chapter "Concerning what is done by a predecessor, concerning schismatics," number 81, with the decree of the Sacred Congregation.

4083. But doubt 4: Does a parish priest who is excommunicated and to be avoided sin gravely by assisting? Coninck, book 27, chapter 2, number 24, and Pontius, book 5, chapter 17, number 44, with Covarruvias, Suarez, volume 5, book 44, section 1, number 24, and Vasquez, "Rebus," and Bonaventure, apud Bossuet, book 5, number 90, affirm this, provided that there is no necessity, because otherwise he would be communicating with others in a sacred and important matter. However, Sanchez, book 3, chapter 21, number 8, and Bossuet, chapter 4, and Hurtado, Diana, Villalobos, Leandrus, etc., apud Salmeron, ibid., number 48 (of whom some hold that he does not even lightly sin), deny this. The reason is that he would be communicating with his parishioners in a matter necessary for their benefit, which he is obligated to provide by virtue of his office. But notwithstanding this, the first opinion seems more agreeable to me, according to what was said about

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Sacred things in general, volume 6, number 88, where we wrote that it is not permissible for parishioners to request the assistance at a marriage of an excommunicated parish priest, unless there is a very serious reason, and another is not present who can provide assistance. All agree that if such a priest has been justly forbidden by his Bishop from assisting, then he would validly assist, but would not be excused from a grave sin, because he would violate the command of his superior in a serious matter; Sanchez, number 44; Salmeron, ibid., number 49, with Pontius, Council of Palafox, Bonaventure, etc.

4084. Doubt 2: Can a parish priest who is excommunicated or irregular grant permission to another priest to assist? Sanchez, book 3, chapter 21, number 8, Palafox, page 43, § 40, number 8, Barbatus, all 32, number 440, Pontius, book 5, chapter 17, number 14, Bonaventure, page 8, number 22, with Cajetan and Led and Salmeron, ibid., affirm this.

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54. Some, following the Council of Trent, Henry, etc., argue that granting a license is not an act of jurisdiction, but of power. However, Layman, chapter 4, paragraph 5, and the Council of Dice, Suarès, etc., as cited by Salm, book 1, chapter 5, paragraph 50, contend that, although assisting at a marriage is not an act of jurisdiction, granting a license is. However, Sanchez wisely responds that the power to grant a license does not belong to the parish priest as such, but to a legitimate witness of the marriage, appointed by the Tridentine Council with the power to substitute another; therefore, the first opinion seems more probable.

2. A parish priest, or anyone having ordinary jurisdiction, can substitute another, but only a priest.

4085. "Since it is not required that witnesses be free from all exceptions, even infamous persons, women, children with sufficient use of reason, parents, servants, and slaves are sufficient." (Even non-believers, although they may be passing through by chance or are forcibly detained, as Sanchez, book 3, chapter 45, paragraph 5, Palatinus, page 43, section 43, paragraph 3, Barbatus, all 32, paragraph 438, Layman, chapter 4, paragraph 6, Bonaventure, page 8, paragraph 43, and Salm, on marriage, chapter 8, page 5, paragraph 59, with the Council of Dice, etc., state.)

4086. 4. If there are two parish priests in the same parish, either one can perform the marriage (even without the consent of the other; Salm, ibid., page 3, paragraph 32, at the end, with the Pontifical Council of Henry, etc.). Similarly, someone who has two homes that they inhabit equally, or a home that belongs partly to one parish and partly to another, can have the marriage performed in either parish; because each is their proper parish. Layman, Bonaventure, book 1, chapter 5, and Sanchez, commentary. If the bride and groom have two homes in two parishes, St. Antoninus, Palatinus, Anglus, Gabrius, etc., as cited by Sanchez, book 3, chapter 24, paragraph 4,

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say that the marriage should be celebrated in the parish where they reside at that time. However, Sanchez, book 1, chapter 5, Roncaglia, question 2, rule 4, with the commentary of Bossuet, volume 1, chapter 4, paragraph 4, Bonaventure, page 8, paragraph 8, with Gutt and Rebellin, Pontifical Council, chapter 43, section 4, paragraph 4, Barbatus, all 32, paragraph 60, with the Council and Salm, cited, paragraph 32, with Perez, Trullian Council, and Henry, state that the marriage can be celebrated in either parish, provided that the bride and groom have equal residence in both parishes, because in either parish they can receive the sacraments. This is confirmed by chapter 2 of the decrees on burial, which states: "When someone who has two homes resides equally in both, if a burial place is chosen in a third location, the churches of the homes will divide the canonical portion." Therefore, actual residence is not required, but only equal residence. This equality must be understood morally, as Lugo, in his Moral Responses, book 4, doubt 37, paragraph 3, Barbatus, paragraph 70, Bossuet, paragraph 5, Roncaglia, book 1, chapter 5, Salm, on marriage, chapter 8, page 3, paragraph 32, and Sanchez, paragraph 3, with St. Antoninus and Palatinus, state. Bossuet states, with Sanchez, Pontifical Council, and Gutt, that this applies not only if someone lives in the city in the winter and in the countryside in the summer, but also if they live indifferently, sometimes in one place and sometimes in another. It should be noted what is stated in the decree.

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SC, in *Notificatio* 33 of Benedict XIV, number 7, states: "A rural pastor is not the proper one when one goes to the countryside for recreation, or for business related to the rural inhabitants; therefore, a marriage cannot validly be celebrated before such a pastor." However, this is rightly understood by Bon., page 8, number 3; Barb., *all.* 22, number 66; Boss., chapter 4, number 47; and Salm., ibid., number 26, with Sanchez, *Pal.*, *Dictio Trull.* and *Av.*, if the betrothed reside in the countryside for a time, even if it is a short period (as Barb. says, with Lugo). Therefore, Benedict, in the aforementioned passage, Salm., ibid., number 27; Barb., ibid.; and Boss., number 47, with Henry Garcia, Seraph., etc., from the declaration of the Sacred Congregation, reject the opinion of Pontium, who in book 5, question 45, section 41, number 4, believes that a marriage can be contracted even before a pastor in whose parish one briefly resides (1). Furthermore, it must be diligently noted that if someone falsely transfers their domicile to another parish in order to have a marriage celebrated there, this is invalid, as the Sacred Congregation has declared on several occasions; see P. Zacharias, in Croix, book 6, page 3, number 747. However, if one truly transfers their domicile, even if it is to deceive the previous pastor, as rightly stated by Croix, ibid., with Fagn., Sanchez, Sylv., Barb., Boss., etc., against Led. and Vega. Croix notes in the aforementioned number 747 that,

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concerning Lucca, a domicile is not acquired merely by residing there for a single day, if one spends the night in their previous home.

1087. — "5. Although, according to the precept, the pastor of the contracting party in whose parish the marriage is celebrated should be present, it is sufficient for validity if either pastor is present, as declared by the Sacred Congregation in Rebel. and Bon., question 48." (Thus, Sanchez, book 3, title 23, number 4; Pal., page 12, section 9, number 4; Pont., book 5, chapter 46, number 2; Bon., question 2, page 8, number 7; and Salm., *de matr.*, chapter 8, page 3, number 24, with Con. Perez, etc.; also, Benedict XIV, *Notificatio* 33, number 5, from the declaration of the Sacred Congregation in the year 1573. And Fagn. presents a similar case in book 4, in the chapter *Quod nobis, de clandest. desp.*, published on December 45, 1574, where, with the approval of the Pope, it was decided that a marriage is validly celebrated in the parish of the woman before the pastor of the man, and conversely, even outside his own parish or diocese; because this act does not pertain to contentious jurisdiction.) And in this, the pastor does not sin, as Sanchez, book 3, title 19, number 47; Salm., ibid., number 34, with Pal., Con., and Dic.; and Boss., book 4, number 32, with Barb., Gutt., Villal., etc. (against Pont., Nav., etc.); for the act of assisting is not an act of jurisdiction, but rather an act of power to assist as a witness, as we have said in number 1084. Furthermore, Bossius states in number 20, at the end, that it is more fitting that the pastor of the groom should be present, in whose parish the marriage takes place. However, Sanchez, number 49, and Boss., number 33, rightly state, based on the decrees of the Sacred Congregation cited by Boss., number 49, that the pastor gravely sins if, in another parish, he solemnly blesses the betrothed who have joined themselves together."

However, it will not be permissible to bless the marriage without the permission of the other pastor. Sanchez, book 3, dispensation 49.

(1) From the Civil Code, article 74, concerning the celebration of marriage, a domicile is acquired by six consecutive months of residence in the same place.

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4088. — • 6. The one who is substituted must have express, or at least tacit, permission from the granting authority, because a permission granted for the future is not sufficient, as some believe, that the other party will later ratify it; Sanch. d. 35. Regin. Con. apud Bon. l. c. n. 14. • (Likewise, Sanch. d. 35. n. 20. Pont. l. 4. c. 44. n. 4. Salm. ibid. p. 4. n. 56. cum Conin. And this even if the permission was extorted by fear or deceit. Salm. l. c. cum Con. et Sanch. However, a permission given orally is sufficient: Barb. all. 32. n. 128. cum Nav. Henr. etc.) • Although even St. Bonaventure denies that tacit permission is sufficient.

4089. — • 7. Vagrants can contract marriage before any priest, and this, (as Laym. c. 4. n. 3. teaches from Sanch.), even if only one of them is a va-

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grant. However, he is obligated to diligently inquire about their condition, as the Council of Trent advises, whether they are indeed joined elsewhere, etc., and then to request permission from the Bishop to perform the marriage: without which, although he may validly perform the marriage, he nevertheless sins gravely. Thus, Laym. t. 4. l. 3. Sanch. dist. 19. et d. 35. n. 14. • It is commonly held that vagrants can contract marriage before any priest; thus, Sanch. l. 3. d. 25. n. 14. Pont. l. 5. c. 14. n. 5. Bon. q. 2. p. 8. n. 6. Pal. d. 2. p. 43. §. 9. n. 14. et Salm. de matr. c. 8. p. 3. n. 37. cum Con. Henr. Trull. Led. etc. And this even if only one of the betrothed is a vagrant, as Pal. and Salm. ibid. in fin. cum aliis; and this is what Barb. in Trid. n. 3. and 4. reports as decided by the Sacred Congregation. The priest, however, before joining vagrants in marriage, is obligated to diligently inquire about their condition (as prescribed by the Council of Trent, session 24, chapter 7), whether they are joined elsewhere: and then to request permission from the Bishop to perform the marriage, without which, although he may validly perform the marriage, he nevertheless sins gravely by performing it, as taught by Sanch. n. 16. Pont. n. 8. Salm. ibid. n. 38. cum Led. et Henr. ac Barb. in Trident. l. c. cum Fill. Molf. Homob. etc. Indeed, in the instruction of the Sacred Inquisition General, published on August 21, 1970, before Pope Clement X, for the courts of both the Roman and other Ordinaries (which Genettus refers to extensively in vol. 5, p. 326, and Pitton in de matr. n. 4737.), it was prescribed as follows: If the contracting parties are vagrants, no permission to contract marriage should be granted, unless they prove that they are free by the faith of their respective Ordinaries, observing the form of the Council of Trent, in chapter 7, session 24. No faith or other documents are accepted unless they are accompanied by the seal and legal authority of the ordinary Bishop, and at least recognized by witnesses who have a known hand and seal. And it must be carefully considered that the faith and testimonies clearly identify the persons about whom they are speaking. Note, however, that Salm. cit. n. 38. around the middle, uses the name "vagrants" to not include those who are vagrants in the same place, because these, although they do not have a certain parish, are nevertheless already known in that place, from which they can be validly joined by any priest after proper announcements. Regarding foreigners, the same instruction of the Sacred Inquisition is held, as mentioned above (n. 4739. ap. Pitton.), that the priest

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Thus, he cannot perform marriages for them unless he has previously received authentic proof of their status as free persons from the Ordinary, or his vicar. However, Sanchez, n. 8, and Salm, loc. cit., correctly state, along with Pont. and Con., that if the contracting parties have departed from the place where they were incapable of contracting marriage, the marriage is valid.

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1090. Furthermore, concerning soldiers, it should be noted from the decree of the Sacred Congregation, November 4, 4576, cited by Pitton in *De Matrimonio*, n. 2147, that chaplains of the army have the faculty of assisting at the marriages of soldiers when they are found to be on actual campaign. However, they do not have this faculty exclusively with respect to the parish priests of the contracting parties, nor when the soldiers are stationed in winter or summer quarters, nor when they are on guard duty. Moreover, it is stated in the declaration of the Sacred Congregation, under Pope Zacharias, cited by Croia, book 6, page 3, n. 751, that chaplains cannot even administer the sacraments of Penance, Eucharist, and Extreme Unction to soldiers on guard duty without pontifical permission or the license of the local Ordinary. The marriages of soldiers, however, should be contracted in the same manner as those of vagrants, as stated in the cited instruction of the Congregation of the Inquisition, as above, in Pitton, n. 2308. However, it is added that in times of necessity, or at the point of death, these same proofs are not required; but if they recover, they must be provided before the marriage is consummated. See other matters concerning the marriages of soldiers in Pitton, n. 2356.

1094. "8. Those who, due to a short period of absence from home, are traveling," cannot contract marriage in a foreign place before the local parish priest, because it is not their true parish. This is different from those who establish a residence somewhere for the greater part of the year, or who come there with the intention of staying there, at least for the greater part of the year, even if it happens unexpectedly that they later have to leave, such as servants, maids, or students. See Bon., q. 4, p. 8, n. 4; Sanchez, book 3, title 23, n. 44. The reason is that they establish a parochial residence there; and the pastor of that place is properly their pastor. What if someone were to move elsewhere with the intention of staying there for the greater part of the year, and then returning to their own home, could they contract marriage before the parish priest of that place, and receive other sacraments? Rodriguez, Led, Henry, and others, cited by Sanchez, book 3, title 23, n. 44, and Salm, chapter 8, n. 29, deny this, but Sanchez and Palau rightly consider this to be quite probable. However, it is more commonly and probably affirmed, along with Busemb., Sanchez, n. 12; Pont., book 5, chapter 43, n. 4; Pal., p. 12, § 9; Bon., p. 8, n. 2 and 5; and Salm., *De Matrimonio*, chapter 8, p. 3, n. 30, along with the Council of Trent, Gutt., Dic., etc. This is proven from the final canon on parishes, where those who are transferred to another parish due to war are considered to be parishioners of that parish. And it is confirmed by the declaration of the Sacred Congregation, cited by Benedict XIV, Notification 32, n. 44, where it is stated that a marriage contracted by a temporary judge or doctor in the place where he is then residing is valid. Otherwise, if someone moves elsewhere not with the intention of establishing a residence there (or

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quasi-residence, as it should be understood), as is said...

[*Latin ed. p. 214*]

In the same declaration; see the statements concerning Baptism, book 6, number 145, verse. But here. And likewise, foreigners detained in prisons cannot contract marriage there, according to another declaration of the Sacred Congregation, issued in the year 1470, found in Benedict, number 42, which in number 47, from a certain letter of the Holy Office, states the same concerning the sick who are cared for in hospitals, unless necessity compels them to contract marriage, and there is no time to ascertain their freedom. However, if they recover, they will not be able to consummate the marriage unless it is established that both are free. Furthermore, girls who reside in orphanages are to contract marriage not before the chaplains of the orphanage, but before the parish priest of the place, according to a declaration of the Sacred Congregation of April 22, 1654, found in the same Benedict, number 14, which adds that, according to ancient custom, these girls who reside in orphanages, from whom they receive sustenance and dowry, can also validly contract marriage before the same parish priest of the place. Regarding other girls who are in monasteries for the purpose of education, Benedict states in number 46 that they should contract marriage before the parish priest of the paternal, maternal, or fraternal home, if one is present; if not, before the parish priest of the monastery. And the same asserts in number 47 concerning servants residing in the homes of nobles.

4092. — "9. The parish priest and witnesses must be present in such a way that they can observe what is being done and testify about it." (Therefore, their mere physical presence is not sufficient, but moral presence is also required, as proven by Father Zacharias in Croia, book 6, page 3, number 758. And therefore, Pontius (against Sanchez) rightly states in Croia, book 6, page 3, number 759, that if they do not properly understand the consent of the parties (for example, because they are of different languages), it is not sufficient for one interpreter to affirm the consent.) "Indeed, it is not necessary that they see the contracting parties, provided that they hear the words of the contract, if they know the voices of the contracting parties; (it is sufficient if they see the signs of consent, as Sanchez states, book 3, title 39, number 4, and title 44, number 2, Pontius, book 5, chapter 21, number 8, Palatinus, page 13, section 8, number 44, and Salmanticensis, on marriage, chapter 8, page 5, number 61. Note here the declaration of the Sacred Congregation in Fagnan, book 4, in the chapter concerning clandestine marriages, number 4, where it is stated that the marriage is valid even if the parish priest says nothing.)" Sanchez, Fillius, Pontius, and others, 5, with Diana, page 8, chapter 7, rule 68, against Barbatus.

It does not matter, even if the parties are unwillingly detained, or even object and resist, due to fear, force, deceit, or injury. (And it has been decided on several occasions by the Sacred Congregation, as reported by Fa-

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ther Zacharias in Croia, book 6, page 8, number 760.) Or even if they are prohibited by the Ordinary from being present. Ronchin, book 6, chapter 12. The declaration of Cardinal Consalvi, Fillius, Sanchez, and others.

4093. — However, the contracting parties gravely sin if they are before the parish priest, detained by force or deceit, or even by chance, due to the injury inflicted upon the sacrament and the Church, since the parish priest then acts as a public official; Sanchez, title 39, number 42, Palatinus, page 13, section 8, number 44, and Salmanticensis, ibid., number 68, with Consentius and communis. And in some dioceses, excommunication is present in this matter.

[*Latin ed. p. 215*]

It is taught, as the Salm. affirms in the aforementioned passage, that this impediment is merely venial; however, Sanch. in the same place, as well as Gutt. and Aversa, cited by Salm. in the same place, state that it is only a hunting offense, and that the presence of witnesses, as mentioned above, constitutes a deceitful defense. Furthermore, Pal. in the aforementioned passage, and Salm. in the aforementioned passage, at the end, along with the Council of Trull., and Aversa, state that, if there is an urgent necessity to contract marriage, and the parish priest refuses to assist, and it is not possible to reach a superior, then the priest, who is unwilling, can be compelled, provided that force is not used against the person. Indeed, Dic. in Salm. in the aforementioned passage, concedes that, even by force, this can be done if otherwise the vexation cannot be removed, because the parish priest is then obligated by his office to assist; see note 1005, 4094.

10. The parish priest is obligated to question each of the contracting parties, not concerning an impediment, as Guttier., Sanch., and Diana state on page 3, volume 4, section 294, but concerning their mutual consent, as stated in the Council of Trent, session 24, chapter 4. However, if it is clear that both parties are giving their free consent, then this omission is only venial, as Sanch. in *Conin. Dian.* in the aforementioned passage states (with Salm. in *de matr.*, chapter 8, page 5, note 70, with Pont. and Aversa).

Similarly, it is not mortal sin if, even with understanding and consent, one does not say: "I join you together in the name of the Father, and the Son, and the Holy Spirit. Amen," as Sanch. in *Con. Vill.*, Gutt. in *Dian.* on page 3, volume 4, section 256, teach. (It is probable that Pont. in book 5, chapter 21, note 2, Sanch. in book 3, title 38, note 75, Pal. on page 13, section 18, note 12, and Salm. cited, note 70, with Gutt. and Bon., state this. However, Bossius in chapter 3, note 15, with Reb., Barb., Veracr., and Salzed., still probably, and perhaps even with certainty, states that it is a mortal sin, because it seems to be a transgression in a matter of great importance.) 4095.

14. It is stated that an impediment is called "frigidity" or "impotence," which, if it is permanent, and precedes the marriage, invalidates it by nat-

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ural law; or, if it is absolute, in any respect; or, if it is only partial, if it is restricted or relative. And this is true, whether it arises from an internal cause, and a defect of nature, or from an external cause, due to the actions of a man, or the devil; whether it is known to the other party, or not; whether it is on the part of both contracting parties, or only one.

The reason is that marriage consists in the mutual exchange of bodies, physically capable of procreation, or in the exchange of the power of the body for conjugal intercourse; but the impotent person cannot make this exchange, because they do not possess this power. Furthermore, impotence is considered to be in a man when he is an eunuch, or at least cannot ejaculate within the natural receptacle of a woman; and in a woman, when she either cannot ejaculate (if it is true that female semen is required for procreation), or because of tightness cannot allow a man to enter, or cannot receive his semen.

I said 4. If it is permanent: that is, which cannot be removed by any means. In a case of doubt concerning permanence, the law allows a period of three years to test it in good faith. I said 2. If it precedes: for if it follows the marriage, it does not invalidate it, even if it prevents its use, so that only contact and kisses are permissible.

[*Latin ed. p. 216*]

Before the dangers of pollution; and this is the case when the impotence is certain; for if it is doubtful, it is permissible to continue to attempt intercourse as long as there is a reasonable hope of conceiving within the womb. Laym. l. 5. t. 40. p. 4. c. 42. from Sanch. Nav. Henr. Therefore, it is resolved: 1. Eunuchs, or those lacking both testicles, do not validly contract marriage, because they do not emit true semen suitable for generation. It does not matter that they may satisfy the concupiscence of a woman, as they do not do so through intercourse in a manner naturally suited for generation, due to the lack of semen, which the elderly do emit, even if the semen of the elderly is not prolific by chance. Laym. loc. cit. Bon. q. 3. p. 43. (This is certain from the bull of Sixtus V, issued in the year 1587, which begins, "Cum frequenter." Understand, therefore, that if they lack both testicles, or if they have bruised testicles; otherwise, if they have at least one, as Sanch. l. 7. d. 104. n. 17. and Salm. de matr. c. 42. p. 41. n. 429. with Avers. Dic Led. etc. 2. The sterile validly contract marriage, because, although they are impotent for generation, they are not impotent for intercourse; and therefore, they are capable of all the rights and obligations of marriage; and although the procreation of offspring is a principal end of marriage, it is not the only end, nor the immediate end. Bon. q. 3. p. 43. from Henriq. Con. Filliuc. etc. The same reasoning applies to those who do not conceive, except in the case of death, or only with danger to life. Con. etc. ll. cc. II. Hermaphrodites, because they are truly capable of the use of marriage. Indeed, if one sex predominates, they will be valid only in that sex; if both

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are equal, they are given the option to use either sex, but in such a way that they should always retain the one they have chosen. Sanch. l. 40. d. 106. Bon. l. c. from Henr. Con. Fill. etc. III. He who is about to die shortly, because in him remains the power to conceive, even if he is hindered by the accident of the disease. This is clear from the practice of the Church, which advises them to take concubines. Laym. l. c. from Sanch. d. 105. n. 3. Cov. etc. Those who have not reached the age of puberty, if they use reason, do not validly contract marriage by natural law, but only by ecclesiastical law: because their impotence is only temporary. The impotence of which we are speaking here is that which prevents spouses from having intercourse that is naturally suited for generation; therefore, just as marriage is valid between those who can have intercourse, even if they cannot generate by accident, such as if they are sterile, or elderly, or if the woman does not retain the semen, so there is no marriage between those who cannot consummate that act by which generation would be possible. In order for impotence to invalidate a marriage, it must be perpetual and pre-existing. Therefore, if it is only temporary, arising from some disease, or a naturally curable defect, it certainly does not invalidate the marriage. Nor does it invalidate if it arises after the marriage. But if it precedes, and cannot be removed, except by...

[*Latin ed. p. 217*]

A miracle, or through sin, or with the danger of death, then it invalidates the marriage, as is expressed in chapter *Fraternitatis*, concerning frigidity and impotence. Impotence, however, can arise from four causes: I. from a curse, II. from frigidity, III. from disproportion, IV. from the mixing of sexes (that is, if one of the spouses is a hermaphrodite), concerning which it is sufficient that which Busemb. says; therefore, we speak only of the other three causes here.

4096. — And I. if the impotence arises from a curse (which is inferred when the spouses are incited to copulation with others, and become cold towards each other, or abhor the act, even though they love each other), then if the curse cannot be removed within three years by human means, nor by prayers, nor by exorcisms, the impotence is considered perpetual, and it invalidates the marriage; thus, commonly, D. Th. in 4th part, 34th question, 1st article, 3rd answer; Sanch. l. 7, d. 94, n. 12; Croix, l. 6, p. 3, n. 700; and Salm. de matr., c. 12, p. 14, n. 131, with Sot. Con. Bon., etc., from c. *fin.* of frigidity and impotence. Hence, if the curse is removed by another curse (which is certainly illicit), the marriage is also considered invalid, as commonly taught by Sanch., n. 9, with D. Th., D. Bonav., and others, throughout. Conversely, if it is removed by removing the sign, as Sanch., n. 22, and Salm., ibid., n. 132, because then the impediment is lawfully removed, Salm., ibid., *in fine*, with Sot. and Avers.

II. If the impotence arises from frigidity, then when the spouses, for this

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reason, cannot completely consummate the marriage in a manner suitable for generation, after a trial of three years, there is no marriage. The Doctors commonly state that this occurs if, because of excessive heat, the man always emits semen outside the womb, before he can penetrate; thus, S. Anton., 3rd part, title 1, c. 12, § 1 and 2; Navar., c. 22, n. 59; and Sanch., n. 7, with Sot., Palud., Val., Led., Gutt., etc., from D. Thom., Suppl., qu. 58, art. 1, ad 2, where he says: "Excessive heat can scarcely be a perpetual impediment; if, however, it is found to have prevented carnal copulation for three years, it would be considered perpetual." But it is probably held by Cont. Tourn., *tr.* de Dispens., in spec. part. 1, cap. 14, r. 2, v. If, however, and Cabass., T. J., l. 3, c. 25, n. 2, such spouses, if they are young, should not be separated, because with the passage of time, that fervor diminishes, and they can become capable.

As frigidity and a curse can be impediments, so also, the abomination of a man towards a woman can invalidate the marriage, if, because of her deformity, he cannot in any way be excited to copulation, to which he would be well-excited with another woman; thus, D. Th., d., qu. 58, a. 1, ad 5. Where it is stated: "But the abomination of a woman is not a natural cause, but an accidental, external cause; and therefore, the judgment concerning it is the same as concerning a curse," and thus also Sanch., l. 7, d. 92, n. 13, with Alb. Magno, Sylv. Ang., Tab., Turrecr., etc., against Sot. In these cases, the spouses are given three years, in which they may lawfully try to consummate the marriage, as in c. *Laudabilem*, concerning frigidity and curses.

III. If, finally, the impotence arises from a disproportion, namely, if...

[*Latin ed. p. 218*]

A woman may have a constitution so tightly formed (at least in relation to her husband), that he cannot penetrate her; then, if the woman cannot become suitable for intercourse except with the danger of death, all agree that the marriage is null from the beginning, according to the decree *Fraternitatis*, concerning impediments, etc. Therefore, even if she is cut and made suitable for intercourse with such a danger, the marriage is not valid; because that which is invalid from the beginning cannot become valid with the passage of time; thus, commonly, Sanchez, book 7, chapter 93, number 15, and Cont. Tourn. in the cited place, see response in both, with others, number 4097.

— But, Question I: Whether there is no marriage, if a woman can become suitable for intercourse through an incision, without the danger of death, but with the danger of a serious illness? The first opinion affirms, and this is held by Pal. book 4, section 4, number 5; Spor. on marriage, chapter 1, number 121; also, St. Antoninus, Sylv., Sa., Val., Henr., Veg., Palud, Major, P. Soto, and many others, according to Sanchez, book 7, chapter 93, number 17, who consider it probable. The reason is, because in this case, the

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impotence is not from the will, but from the very nature; for it seems that the woman has not obligated herself in the marriage contract to anything more than to fulfill her duty through ordinary means; therefore, when she cannot become suitable except through an extraordinary means and the danger of a serious illness, she is considered, by her very nature, incapable of marriage. The second opinion, however, denies this, and this is held by Bon. question 3, paragraph 43, number 2; Ronc. chapter 6, question 6; Salm. on marriage, chapter 12, paragraph 10, number 115; and Sanchez, book, chapter, number 15, with Ang. Sot., Tab. Palac., Angles, Man., Graff, Lop, Led, etc. And it is proven from the decree *Fraternitatis*, section: "Similarly, concerning impediments, etc.," where it is said that the marriage is null when intercourse cannot be had, except by incision, or by some other means by which violence is inflicted upon her, not only a slight violence, but perhaps so great (note), that the danger of death is feared. This opinion appears, speaking speculatively, to be truer from the aforementioned text; to which I do not know how to respond; but speaking practically, it does not differ from the first; for, as the aforementioned Sanchez and Ronc. rightly say, whenever a serious illness is feared through an incision, there is also, morally, the danger of death. 4098.

— Question II: If a marriage is dissolved by the judgment of the Church because of the woman's constitution in relation to her husband, and afterwards it is discovered that she can become suitable to a second husband, and through frequent conjugal intercourse, she becomes suitable to the first, must she return to the first? The decree *Fraternitatis*, section: "Similarly, concerning impediments, etc.," says that if a woman could not become suitable to the first, except with the danger of death, then she does not owe anything to him; otherwise, if she could become suitable without such danger. To the question, Innocent Sotus, Host., Præpos., Henriq., etc., respond, according to Sanchez, book 7, chapter 93, number 11, that in this case, the marriage should be considered valid, because if the woman has become suitable to the first husband through intercourse with a second husband, it is a sign that she could well have been made suitable to the first husband in some way, such as with a wooden or iron instrument, without any danger.

[*Latin ed. p. 219*]

Concerning the title of death. But St. Antoninus, book 3, title 1, chapter 12, section 3, ad 1, and Sanchez, book cited, chapter 12, number 12, with the Glossary, and Abb. Sylv. Ang. Turr. Ricc. Durando, Palac. Vega, etc., state that it cannot be concluded that a woman could have been known by the first husband without danger of death, simply because she could be known by the second; for the use of marriage with the second could bring about that she would be made suitable to the first, to whom she was not previously suitable, unless by a surgical procedure with danger

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of death. Therefore, the presumption that a woman could have been made suitable to the first husband without danger of death must be derived from the similarity in age, strength, and body between the first husband and the second; for in the aforementioned chapter of the Fraternity, the Pope, speaking precisely of this case, decreed that the woman should return to the first husband, because the second was similar to the first, as he says: "When it is evident from subsequent events that she was known to him with whom she is mingled." 4099. — Doubt III. Is a wife who is unsuitable for intercourse due to strictness obligated to undergo an incision with danger of a serious illness, in order to be made suitable? There are three opinions: The first opinion, held by Ang. Palac. Cabrera, etc., in Sanchez, book 7, chapter 93, number 31, says that she is obligated, provided that there is no danger of death. The second opinion, completely opposed, held by Pont. book 7, chapter 62, number 2, Pal. book 4, page 14, number 9, Cont. Tourn. in the cited passage, and Pont. de impedim. and Mazz. volume 6, page 82, says that the woman is never obligated to undergo an incision. Reason 1: because in every contract, the proper conditions of that person must be considered; but since marriage implies the condition that the spouses are suitable for its use, if they are not found to be suitable, they are not obligated to proceed to another [marriage]. Reason 2: because if this were a suitable and equitable means, the Church would have prescribed it at some time; but the Church has never prescribed it, but only prescribed a trial period of three years. However, Palac. and Mazz. state, in their respective works, that if the woman contracted marriage knowingly of her extraordinary strictness, and did not reveal it to the husband, then she is obligated to undergo the incision, because of the deception; although, as Palac. adds, it rarely happens, because it rarely happens that a woman knows that she is stricter than others. The third opinion, which is the most common and more probable, held by Sanchez in the cited passage, Bonac. question 3, page 43, number 2, Ronc. chapter 6, question 3, Salm. de matr. chapter 12, page 10, number 116, Sporer. chapter 1, number 128, Croiæ. book 6, page 3, number 798, with Sot. and Perez, and Escob. book 27, number 508, with Mun. Henr. Lop. etc., says that the woman is obligated to undergo an incision, even with great discomfort and pain, but not with danger of death, nor of a serious illness; and although Sanchez in the cited passage says "of a very serious illness," he means the same as "serious," as he explains in number 48, at the end. It is proven that she is not obligated to undergo it with danger of a serious bodily harm, because it is never considered that a woman intended to obligate herself to endure such a danger: nor by force of contra-.

[*Latin ed. p. 220*]

The matrimonial bond seems to impose such an obligation. It is demonstrated that a woman is obligated to submit to the act, even with great

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distress and pain, because she appears to be bound by the contract to do so, since it is necessary to preserve the right to copulation which she has transferred to her husband. This opinion is more common, and seems more probable in theory; but in practice, it is very likely what Cont. Tourn. states in the cited passage, namely, that if the incision could not be performed except by the hand of a surgeon, the woman is not obligated to undergo this incision with such shame, which would be a burden more than grievous; for if a young woman is not obligated to submit to the hand of a surgeon, even to save her life in a shameful illness (according to the words in l. 4, n. 372), how much less should she be obligated to do so in order to make herself fit for the use of marriage? For what is more shameful (says Collet ibid.) than for a virgin to be subjected to the eyes and hands of a surgeon, and to be forced to undergo a shameful and grievous incision?

4400. — Doubt IV. If a man could have intercourse with a woman who is corrupted, but not with a virgin because of her virginal membrane, is she obligated to undergo the cutting of the membrane by some instrument? It is commonly held among all, with D. Th. Suppl. q. 58, art. 4, ad 5, that she can undergo it. But is she obligated? Pont. l. 7, c. 62, n. 2, Pal. d. 4, p. 44, §. 1, and Ledes. Hurt. and Leand. ap. Escob. l. 27, n. 54, deny it. The reason is that the defect is not in the woman, but in the man; therefore, she is not obligated to use a remedy to make herself fit, but it is sufficient that she deliver her body to be opened, provided it is done in a natural way, and not in an extraordinary way. But Sanch. l. 7, d. 93, n. 34, with Vega, Angles, and Lop, argue more plausibly that such an opening can, on the one hand, be done well without shame, either by the man or by the woman herself; on the other hand, the distress that the woman should suffer in such an opening does not seem great, nor extraordinary, but rather is common to all; therefore, since the woman has already given the man the right to copulate, she is obligated to use this means to make herself fit for him, who, because of his weakness, cannot have intercourse in another way.

4401. — Finally, what should be done when the impotence is certain, and when it is doubtful? It is answered: If it is certain and evident, separation should not be delayed, but should be done immediately; for in that case, the marriage is certainly null, both according to ecclesiastical law and according to natural law, since no one can transfer ownership of a thing that he does not have, and although copulation is not the essence of marriage, the power to have it is the essence, as D. Th. Suppl. q. 58, art. 4, ad 1, teaches. Therefore, when impotence is known to be certain and permanent, the spouses can separate immediately, even by their own authority, if it can be done without scandal; otherwise, they are obligated, if there is a danger of incontinence; and the party who is not burdened with the impediment can also enter into another marriage, as Sanch. l. 7, d. 97, n. 8, and Salm. de matr. c. 12, p. 12, n. 435, with Candido, say. But if there is a danger of

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scandal (as is commonly the case), then they must...

[*Latin ed. p. 221*]

They must appeal to an ecclesiastical judge, from whom they are to be separated, at least with regard to the marriage bed; and if either party requests it, also with regard to the dwelling, without waiting for the three-year trial period, which is granted for doubtful impotence, not for certain impotence; thus Sanchez, book 7, title 112, number 3, and Salm, in the cited passage, with Pont. Gutt. and Dicast. And it is clear from chapter *Laudabilem*, concerning chastity, etc., where it says: "If the frigidity cannot be proven, they should live together for three years." Therefore, if the impediment is proven, the three-year period is not granted. However, if they wish to live together as brother and sister, with mutual consent, provided that there is no danger of incontinence, this is permitted, according to the same text; but Merbesius rightly points out that this should never be permitted if the spouses are not elderly.

This applies if the impediment of impotence is certain; but if it is doubtful, and the doubt arises before the marriage, then the one who doubts his own impotence cannot enter into marriage, until the doubt is dispelled by a diligent investigation, because of the serious injury he would otherwise inflict on the other party, as rightly stated by Sanchez, book 7, title 112, number 10, Mazzarelli, volume 4, page 83, section 3, and Palafox, book 4, page 14, number 1, with Guttier. If, however, he contracts the marriage despite the doubt, he may lawfully seek an annulment, because in that case, at least a three-year trial period is granted to him, as will be explained more fully below. Dicastil, in Croix, number 795, and Elbel, page 443, number 265, with Carden and Viva, state that if someone is doubtful about his own impotence due to some positive indication, he may lawfully contract marriage, if, after consulting with medical experts and through experience, it is at least probable that he is capable; because in a doubt, the presumption favors him, that he is naturally capable. This seems quite plausible; for when it is highly probable that it is permissible to administer the sacrament under a condition, if there is a just cause, according to what was said in number 28, he has a sufficiently just cause for marrying under the condition that he is capable, so that he is not forced to remain celibate indefinitely in such a doubt. However, he should warn his spouse about such a doubt before the marriage. Otherwise, given the specific circumstances and experiences, each person is presumed to be capable, even if he has lived very chastely.

If, however, a doubt about impotence arises after the marriage, then the three-year trial period is granted, according to the cited chapter *Laudabilem*, concerning chastity, etc. During this period, the spouses may lawfully intend to have intercourse, even if they frequently or always spill their seed outside the womb, as commonly taught by Sanchez, book 9, chapter

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17, number 20, Palafox, book 4, page 43, section 2, number 11, Salm, on marriage, chapter 12, page 11, number 134, and page 12, number 138, with Soto, Candido, and Cont. Tournhem, volume 2, page 209, see. This applies with regard to the internal forum; but with regard to the external forum, the cause can be pursued in three ways:

I. If one party, due to a doubt about impotence, has, by his own authority, separated himself from the other, and then the one who separated himself, unless he presents clear proof of impotence, must immediately be restored to the other, even with regard to the marriage bed, Mazzarelli, volume 4, page 84, with Palafox, from chapter *Ex parte*, on restoration of conjugal rights. However, Sanchez, book 7, title 112, with the common opinion, states that...

[*Latin ed. p. 222*]

If he withdraws after a period of three years of experience, the judge, before granting restitution, must hear him. II. If one alleges impotence, and the other denies it, then three years are granted by the judge for testing. It should be noted that this three-year period must be continuous, as stated in the chapter on impotence, etc., at least morally, as rightly stated by Sanch. l. 7, d. 140, n. 4, Mazz. p. 85, and Salm. ibid. n. 438, with Coninck, namely, if the spouses cohabit for the greater part of the year; for it is not sufficient if one is absent for one or two months. It should be noted that, although Henriq. and others, in Sanch. n. 3, and Mazz. l.c., say that the three-year period begins from the day of the decree, and Mazz. adds that this is the custom of the Roman court, it is more accurate, as Sanch. n. 4, Salm. cited, n. 438, and Holzm. p. 397, n. 633, with Pichler, teach, that the three years are counted from the time of the attempted marriage; and this is clearly expressed in the chapter Laudabilem, on impotence, etc., where it is said: "From the time of the celebrated marriage, if the impotence cannot be proven beforehand, they must cohabit for three years." Note, however, that from the time of the celebrated marriage, that is, the attempted marriage, as Sanch. explains well; for words must be understood with their effect. Therefore, if the three years must be counted from the time of the marriage, it is unlikely that it is counted from the day of the decree, because the decree could be made two years after the marriage, and thus not only three years, but five years would be granted. In order to dissolve the marriage, they must swear in court that they have never had intercourse, even if they have attempted it several times, as prescribed in the aforementioned chapter Laudabilem, where it is also required that seven relatives or neighbors of good reputation swear, or, if relatives are lacking, seven from the man's side and seven from the woman's side. However, Sanch. d. 409, n. 43, states that this is the procedure if only one of the spouses presents an impediment; but if both admit it, then 14 are required, namely, 7 from the man's side and 7 from the woman's side: these, however, are not required to swear

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that they have never seen the spouses in a state of intercourse; but only that they have believed, or have heard, that they were married, as Panorm. with the Glossary on the chapter Laudabilem, and Salmant. de matr. c. 42, p. 42, n. 437, say. In the case where 7 relatives or neighbors cannot be found, it is left to the judge's discretion, as Salm. ibid. Furthermore, if a woman who was a virgin at the time of the marriage alleges the husband's impotence, a medical examination of the husband must be conducted, and of the woman by experienced midwives, because, although Pontius l. 7, c. 63, considers this remedy of examination to be removed as useless and indecent, it is more probable, as Salm. cited, n. 437, in the end, and Sanch. d. 409, n. 47, with Alexand. de Nevo, etc., require it as necessary, since the impotence cannot be known in any other way; then, such an examination is justified by necessity. And although, ordinarily, a certain judgment cannot be rendered from it, sometimes a probable judgment can be reached, so that the Church can proceed with other remedies; and therefore, in the chapter Fraternitatis, on impotence, etc., the Pope approved the action of a Bishop who had arranged for an examination to be held. If, however, through the examination...

[*Latin ed. p. 223*]

Nothing can be conjectured, namely, if the woman had already been corrupted before marriage, then it is more fitting to believe the husband when he affirms consummation, rather than the woman when she denies it, as Sanchez teaches in book 3, chapter 409, paragraph 45, with Alexander de Nevo, Henry Richard Tournhem, etc. (against Soto, and others), from the chapter concerning dispensation for the impotent, where it is said: "If the husband says that he has knowledge of his wife, and the wife denies it, then the husband's testimony should be believed, if he confirms it with an oath." Sanchez rightly rejects as most shameful what some say, namely, that an experienced matron should be present to observe the act between such spouses.

III. Finally, if both parties admit to an impediment of impotence, then, after a three-year trial, with a solemn oath from both, and with the presence of seven witnesses from each side as mentioned above, the marriage is dissolved, and the party free from the impediment may lawfully enter into marriage with someone else, as is certain among all.

4404. — In cases where there is doubt as to whether the marriage has been consummated or not, it should be judged as consummated, unless the contrary is proven, as commonly taught by Sanchez, book 7, chapter 403, Palatine, part 14, section 7, number 3, and Salm, on marriage, chapter 12, number 436, with Soto, Aversa, and Candido. However, when there is doubt as to whether the impotence preceded or followed the marriage, the opinions of the Doctors differ. The first opinion states that it should be judged that the impotence followed; thus, Palatine, book and chapter,

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Sanchez, number 5, with Alexander de Nevo, Gabriel, etc., and Mazzarelli, volume 4, page 83, section 3, with Soto, Guttieri, and Regius, as cited by Salm, number 436, because, in cases of doubt, judgment should be given in favor of the marriage contracted; and because each person is presumed to be capable by nature, until the contrary is proven. However, the second opinion, which is more probable, states that the impotence should be considered to have preceded; thus, Contini, Tournhem, on dispensations, special part, chapter 14, verse: "In cases of doubt concerning impotence." Renzi, volume 2, page 496, question 30, and Bonaventure, question 3, page 43, number 41, with Anglerius, Rebellinus, Henry, etc., and Salm, book and chapter, with Sylvaticus, Aversa, Veracius, and Candido. The reason is that, since marriage cannot have its proper effect, namely, the procreation of offspring, it is more fitting to judge it invalid, rather than valid, so that it is not turned against its own benefit, which was intended for its good; and thus, the first reason is opposed. However, it is answered to the second reason that, indeed, everyone is presumed to be capable, but not when there is a positive presumption to the contrary, as is the case here; especially if, after the marriage, no special circumstance has occurred that would lead to the presumption that the impotence followed the marriage.

Contini, Tournhem, and Renzi, books and chapters, Sanchez, number 6, and Palatine, number 6, with Guttieri, agree that if the impotence is not natural, but accidental, namely, due to witchcraft, or due to amputation, or another disease, then, in cases of doubt, the presumption is in favor of the marriage.

[*Latin ed. p. 224*]

Entering into marriage, if it is alleged to have occurred shortly after its celebration; in the case of heretical sects, after a long period of time. 4105. — "You ask, what is to be thought of marriages contracted in heretical regions?" Answer: Regarding these matters, the Congregation of Cardinals has resolved the following: 1. Where this decree of the Council has not yet been publicly promulgated in a parish, for example, in Saxony or England, a marriage contracted without the prescribed form is valid. However, the promulgation of the decree is presumed to have taken place if, at some time, it was observed in the parish as a decree of the Council. 2. Heretics, in whose parishes this decree has been publicly promulgated, for example, in Holland, Friesland, etc., are to be held to observe the prescribed form. Consequently, their marriages, even if contracted before a heretical minister or magistrate, without the form of the Council, are considered null; however, Layman, in book 5, volume 10, page 2, chapter 4, believes that this is not the intention of the Supreme Pontiffs, due to the very serious inconveniences that would result. 3. If a parish, in which the decree has at some time been observed, lacks its own pastor and bishop, and no one is present to perform the duties of the bishop or pastor, the marriage is

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valid without the presence of the pastor, provided that, as far as possible, the form of the Council is observed, namely, that at least two witnesses are present. The same is true if the pastor and bishop are hidden by fear of the heretics, so that it is truly unknown where they are, or if they are absent from the diocese for fear of them, and there is no safe access to either. "Note that His Holiness, Pope Benedict XIV, on November 4, 1744, declared that marriages of heretics among themselves, not observed with the form of Trent, are to be considered valid. The same applies to marriages between Catholics and heretics. However, this applies only to places within the Belgian dominion of the United Provinces, and to soldiers sent to fortifications bordering on those areas, and not to regions of Catholic princes, without any further judgment. See the declaration of the Pope at the end of this work. 4106. — "Raptus" is mentioned, see above in the impediment of crime, number 4032. 4107. — To incur the impediment of "raptus," three things are required: 1. That the woman be taken from one place to another, as commonly stated by Sanchez, book 7, title 13, number 21, Council, page 349, number 3, and Salmeron, on marriage, chapter 12, page 43, number 448, and others throughout; or even from one house to another, by some distance, as stated by Holzmüller, number 697, and Tampere, Decrees, book 7, chapter 6, section 2, number 7. Therefore, it is not sufficient that the woman is transferred from one room to another in the same house, even if she is known to have been forced there; it is sufficient if she is transferred to a separate place, in which she is under the power of the man, even if she does not have relations with him there, as stated by Sanchez, Council, and Salmeron, books and chapters. Requirement II: That the woman be taken only for the purpose of marriage; therefore, if she is taken away for another reason, even for the purpose of fulfilling lust, the impediment does not apply.

[*Latin ed. p. 225*]

Doubt; thus, the opinion is held by Sanchez, book 7, title 43, number 4, along with Manuel, Vegu, and others, as found in Palatinus, title 4, page 2, section 2, number 44; in the Council, page 339, number 2; in Holzmayer, number 638, and in Salm, ibid., number 452, along with the Council of Aversa, and others (contrary to Bonaventure, Cornejo, and others, as cited by Busenius, number 4032). The reason is that the Council of Trent intended this impediment only to favor the freedom of marriage, of which it speaks only in session 24, chapter 6, decree III. For a woman to be considered abducted, she must be taken against her will. Therefore, the impediment does not arise if a woman abducts a man, as is commonly held by Sanchez, title 43, number 46, and by Salm, ibid., title 155, along with Bonaventure, Guttmann, Veracini, Diclario, and others. This is because the Council only mentions the abducting man. Nor does the impediment arise if the abduction occurs with the woman's consent, even if her parents or

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guardians object. Busenius considers this probable, and it is the common opinion of Sanchez, ibid., numbers 43 and 44; Palatinus, title 4, page 2, section 2, number 42; Conciliorum, and Holzmayer, books 1 and 2, chapter 42, page 13, number 151, along with the Council of Aversa, Diclario, and others. Otherwise, although the penalties imposed on the abductors may be incurred, the impediment that the Council intended, which is only to protect women from being forced into marriage, is not incurred. Note here that, according to the Council of Trent, as mentioned above, in addition to the impediment, the abductor and all those who assist in the abduction incur excommunication by law. However, the other penalties mentioned there, such as the loss of the woman's dowry, infamy, incapacity for holding office, and loss of rank, are not incurred until after a judgment, as stated by Sanchez, book 7, title 43, number 4, and by Salm, ibid., number 450, along with Palatinus, Diclario, and Perus, in question 4: whether, in such a case, the betrothal is also null, like a marriage? Sanchez, ibid., number 47, and Salm, ibid., number 154, along with Bonaventure, Aversa, Diclario, and others, affirm this. This is because (they say) betrothals also seek freedom, just like marriages; but the penal law extends only where the same reason applies. However, La Croix, book 6, page 3, number 54, and Holzmayer, in his work on marriage, chapter 8, number 274, along with Perez, Pichler, Weistn, Krimer, and others, contradict this. The reason is that betrothals require less freedom than marriage, because betrothals always remain capable of being dissolved; therefore, the same reason does not apply to them as applies to marriage, which can never be dissolved.

Question 2: If someone abducts a woman whom they had previously betrothed for the future, do they incur the penalties of the Council? Ledesma and Henry, as cited by Salm, ibid., number 453, deny this, considering it probable, based on the penultimate chapter on abductors, where it is stated that abduction is admitted where there is nothing previously said about marriages. From this, Henry argues, as cited by Sanchez, book 3, title 42, number 45, that the marriage is valid, whether the bride is willing or unwilling. However, Sanchez, book 7, Palatinus, page 2, section 2, number 14, the Council, page 339, number 4, Escobara, book 27, number 585, along with Sa, Hurtado, Manuel, Cornejo, Candido, and Leandrus, and Salm, ibid., along with Aversa, Diclario, and Guttmann, affirm this. This is clearly expressed in the same text cited above, where, after the words quoted, it is immediately added: "This abductor is not..."

[*Latin ed. p. 226*]

A woman must consent to marriage; and she must be betrothed before being consummated, even if her parents object. Therefore, Sanchez rightly concludes that there is no marriage if a woman is taken away against her will, unless she consents, even if her parents object. And the beginning of the text does not say that abduction does not invalidate marriage because

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betrothal has preceded, but because the woman who was abducted consented.

QUESTION III. When is a marriage invalid and needing to be validated?

1109. How is a marriage to be validated if it was invalid due to a feigned consent, or consent extorted by fear? How, if it was due to a hidden impediment?

1110. Q. I. In validating a marriage that was invalid due to a hidden impediment, is the assistance of a priest and witnesses required?

1111. Q. II. How, and when is an impediment considered hidden?

1113. Q. III. Is a marriage to be validated before a priest and witnesses, if those very individuals were aware of the impediment at the time the marriage was contracted?

1118. Q. IV. Is someone who falsely contracted a marriage obligated by justice to validate it through true consent?

1114. Q. V. If someone falsely, or under duress, contracted a marriage, must they inform the other spouse of the marriage's nullity?

1118. Q. VI. If a marriage was invalid due to some impediment, should each party be made aware of the nullity?

1118. What about in a case of urgent necessity?

1117. Q. VII. In how many ways can the consent regarding the impediment be renewed or clarified?

4109. — R ESP. 4. If it was invalid due to a feigned consent, or consent extorted by fear, either from one side or from both, it can be validated by any sign of true, and new consent; because if only one party feigned, the consent of that one party habitually remains: therefore, with the addition of the other party's consent, it is validated. Sanchez, l. 2 d. 32, n. 9. Coninck, d. 24, d. 40, n. 89. Nav. Fill. Bon., etc. Therefore, it is resolved: 4. If fear, or a lack of consent was on the part of only one party, it must be ensured that that party elicits a new, and free consent, and demonstrates it with external signs; but the other party does not need to declare, or provide, new consent for the validity of the marriage. Sanchez, l. c., n. 40. Con. Bon., p. 9. Merat., de 7. s. 45, n. 4. 2. If both parties feigned, or were coerced, it is necessary that both renew their consent, and express it with words. Because, when the consent of both is completely null, it is just as necessary to renew, and declare, as if it had never happened. Merat., l. c., n. 3. Resp. 2. If it was invalid due to an impediment of consanguinity,

[*Latin ed. p. 227*]

For example, or another similar circumstance that removes a hidden impediment, then, through dispensation, or otherwise, the impediment being removed, and thus the parties being made capable of contracting, a new consent from both parties is required, expressed by an external sign: and indeed, as Sanch. teaches in book 3, title 36, it is probable that this

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consent is without any connection to the previous one. The reason is that the previous consent of neither party was legitimate, since it did not fall upon legitimate matter. Therefore, it is resolved: If, in such a case, one party is unaware of the impediment, or if there is doubt as to whether they are aware, that party should be gently encouraged to give absolute new consent, saying, for example, "If you had not married me, would you not now be able to marry?" or: "I am troubled by scruples about the validity of our marriage, and therefore we renew our consent." If this is done, it is sufficient, especially if it is followed by marital intercourse, as Quint. teaches in the appendix to book 7, title last. But if there is a danger that the party unaware of the impediment will object, and scandals and serious troubles are feared, it is permissible to use a contrary opinion, which teaches that it is sufficient for only the party aware of the impediment to renew the consent, and to declare it to the other party, as Sanch. teaches in book 2, title 26, and in book 8, title 34, number 64; Less. teaches in book 2, chapter 47; Con. teaches in title 24, title 40; and Fill. teaches in number 29, etc.; Dian. teaches in page 4, volume 4, response 49, number 3. In order for an invalid marriage, which has been celebrated before witnesses and a priest, to be made valid, it is not necessary to again enter into the marriage before the priest and witnesses, if the impediment is hidden; otherwise, if it is known: because the former marriage is presumed by the Church to be valid, but the latter is not. Nav. Sanch. teaches in book 2, title 37; Con. teaches in title 24, title 4; Reg. teaches in book 31, number 183; Fill. teaches in number 93. Here, it should be noted what we said in book 4, number 50, namely that it is the common opinion of the Doctors that, when it is a question of revalidating a marriage, for the good of souls, the Church is presumed to dispense with the impediment (if one is present), always and whenever there is a true probability of its validity. Therefore, where there is doubt among the Doctors about the validity of a marriage, it can be well considered as valid, if it is truly probable that it is valid; provided that the doubt concerns an impediment imposed by the Church, for in impediments of natural law, the Church cannot dispense.

440. — Question 1. Whether, in order to revalidate a marriage already celebrated in the sight of the Church, there is need to revalidate it again before the priest and witnesses. The first opinion affirms this, and this is held by Comit. in book 4, chapter 120, number 3; Conc. in page 390, number 14; and Pont. in book 5, chapter 6, number 6, with Patac., Gutt., and others. The reason is that the assistance of the priest and witnesses is assigned by the Council of Trent as a form, or as a substantial requirement of marriage; and the form must be observed when the contract is celebrated.

[*Latin ed. p. 228*]

If the first marriage was null, then when it is contracted anew and truly, the proper form must be observed. However, the second opinion, which

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is more probable and commonly held, states the contrary; the reason being that by prescribing the presence of the parish priest and witnesses, the Council evidently intended not to include this case: for the Council intended by that presence only to address the sins arising from marriages secretly celebrated; but in our case, the marriage has already been publicly contracted; and therefore, it is sufficient to simply establish a new consent: thus Nav. Man. c. 22, n. 70; Natal. ab Alex. de matr. art. 13, reg. 47; Fagn. in c. Is qui fidem, de spons. n. 14; Habert de matr. c. 4, in fine; Cont. Tourn. tr. de Dispens. in spec. part. 1, cap. 12, quær. 2, r. 2; Anacl. p. 702, n. 172; Cardenas in prop. Innoc. XI. d. 2, n. 665; Spor. p. 252, n. 453; Ronc. p. 179, q. 4; Boss. c. 2, n. 36; Viva q. 2, art. 3, n. 8; Holzm. n. 699; Auctor. Istr. per li nov. conf. p. 2, cap. 45, n. 326; Sanch. l. 2, d. 37, n. 3, cum Vega, Lop. Man. Henr. Philiarch. Rodr. etc.; Elbel p. 456, n. 345, cum Bosco, Corduba, Herin. Ills. etc. et Salm. de matr. c. 3, p. 5, n. 428 et 429, cum Soto, Cajet. Bon. Con. et Pal.; Item SS. P. Benedict XIV. Notif. 87, n. 62, cum Pontas, Van Espen et communi, as is testified. And thus, it has been decided, and constantly demonstrated in practice, by the Sacred Penitentiary, based on the Oracle of St. Pius V, who, when specifically asked about this matter, declared that the parish priest and witnesses are not necessary when a marriage is contracted anew by those who publicly contracted it, if that marriage was null due to a hidden impediment, as testified by Cardenas l. c. n. 668, and almost all the aforementioned authors, along with the same Pope Benedict, who was an official of the aforementioned tribunal. Therefore, when dealing with a marriage contracted with a hidden impediment, the Sacred Penitentiary uses this formula when granting a dispensation: "Since the same person can, with the same woman, publicly contract marriage, observing the form of the Council of Trent, it is granted a merciful dispensation." However, when dealing with a marriage that has already been publicly contracted before the Church, it uses these words: "Since the same person can, with the same woman, after being certain of the nullity of the previous marriage (but this must be done cautiously, so that the fault of the person seeking the dispensation is not imputed), validly contract marriage with the same person, and both can secretly agree to do so to avoid scandal, a dispensation is granted." Therefore, observe that in the first case, because the presence of the parish priest is required, it is said that the form of the Council is observed. In the second case, it is said, "secretly to avoid scandal," that is, as is evident, without the parish priest and witnesses. And thus, the Sacred Congregation has declared this several times, as the same Pope Benedict reports, adding that, at one time, the Roman Rota had some doubts about this, but after being admonished by the Prefect of the aforementioned Sacred Congregation, that its declarations were consistent with the pronouncements of the Sacred Penitentiary and the Oracle of St. Pius V, the Rota subsequently followed this opinion consistently in many

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of its decisions.

[*Latin ed. p. 229*]

Pontius objects, citing the oracle of Clement VIII, which is detailed in book 4, chapter 24, paragraph 4. There, it is recounted that when a certain woman, out of fear, had entered into a marriage, she consulted with Stephen Tucium at the request of Paul Comitoli. Clement VIII responded that the consent of both parties was necessary before the parish priest and witnesses, after first informing the previous husband of the nullity of the marriage; but to avoid scandal, he granted a dispensation, so that they might contract the marriage secretly between themselves with renewed consent. However, our authors, and especially Salm, Rane, Spor, Holzm, Boss, and Klb., respond in multiple ways, specifically: 1. That this impediment, although hidden, since it arose from fear instilled, was subject to the danger of publication or legal action. 2. That the Pope either responded as a private individual, or followed a safer course of action. 3. That it is not sufficiently certain that the aforementioned oracle exists, as it is certain that the oracle of St. Pius V exists, which is confirmed by declarations of the Sacred Congregation, decisions of the Roman Rota, and the constant practice of the Holy Penitentiary. Regarding the opposing opinion, it is argued that the Council desires the assistance of a priest and witnesses to prove the validity of the marriage according to its external appearance; but when a marriage has already been contracted and is externally considered valid, the reason for requiring that assistance again ceases to exist.

Question II: How, and when, is an impediment to be understood as hidden, when the Letters of the Holy Penitentiary state: "Provided that the impediment is hidden?" Navar, chapter 87, paragraph 255, speaking of Consists with the Gloss on chapter "Quis aliquando." §. In "Hæc eryo, de pænit. d. 1. v. Secreta," it is said to be hidden when it has been done in the presence of five people, because (as Navar says), it is not of the essence of something hidden that it is not probable by its very nature, as are mental things. Therefore, it concludes that in order for a crime to be called hidden, it is sufficient that it is not public to the majority of the town, neighborhood, or college, where at least ten people are present; and the same is held by Suar, de censur. d. 44, session 3, paragraph 6; Azar, book 8, chapter 10, question 9; Tol, book 4, chapter 80, paragraph 5; Mol, de just. tr. 3, book 39, paragraph 8. See the statements in paragraph 593, vide "Hinc autem."

However, Fagnan rightly points out in chapter "Vestra, de cohab. cler.," paragraph 417, that this doctrine, namely that something is known to the majority of the parish, should be understood with a grain of salt; for if there were a thousand people in the parish, it would be incorrect to say that something was hidden that was known to four hundred or five hundred. In our case, Sanchez, book 2, book 37, paragraph 44, with Henry and Man, states that if the impediment can be proven by two witnesses, it can no

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longer be said to be hidden, even if there is no danger of it being brought before a court; because then the same inconveniences would follow that formerly followed from a clandestine marriage; for, once the impediment is proven, after the marriage has been contracted, one of the spouses could enter into another marriage. But others, more commonly, say, as Spor says, page 352, paragraph 462, with the common opinion, and Croia.

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l. 6. p. 3. n. 845. When Laymann, Hurtado, and Reynaldi state that this [dispensation] should only be granted when a prudent person judges that there is a danger that the matter should be brought before a secular court; and Sanchez seems to have retracted this in l. 8. d. 34. n. 55, where, explaining from Navarret, c. 27. n. 454 and 455, the aforementioned clause of the Sacred Penitentiary, he says that, provided there is a hidden impediment, as Lopis and Manuel state, that which is hidden is that which is not public to the majority of the parish, neighborhood, or college. Therefore, SS. Pius Benedict XIV rightly concludes in Not. 87. n. 45, in fine, with Navarret and the Thesaurus, that the confessor should abstain from granting the dispensation when, from the circumstances, he can prudently conjecture that a hidden impediment may become public. Furthermore, with the same authors and Sayre, they state that an impediment is said to be hidden if it is known to only six people in a town, or seven or more in a city, provided that it has not been divulged by them. Fagnan, in the aforementioned passage, n. 418, testifies that the Sacred Penitentiary observes this practice: when a crime is known only to four or five people, it grants a dispensation in it as if it were hidden; but I know that the Sacred Penitentiary has granted a dispensation in a certain impediment of consanguinity known to about ten people. Furthermore, Fagnan, n. 420, notes that this should be understood when the Sacred Penitentiary says simply "hidden" in the clause; otherwise, if it says "completely hidden," as it usually does in the case of an impediment of a crime; because then it rightly says that a crime which can be proven by two witnesses is not hidden. Conversely, the aforementioned Benedict, n. 42, with reference to Leone, Bona, Navarret, Giribalt, and others, notes that sometimes a crime may be publicly known in a material sense, namely, if it is known to the neighborhood; but formally hidden, namely, if it is unknown that an impediment of affinity arises from that union, and then a dispensation can still be obtained from the Sacred Penitentiary.

4422. — Question III. Should the marriage be validated before the parish priest and witnesses, if they themselves were aware of the impediment at the time the marriage was contracted? Sanchez affirms in lib. 8. d. 73. n. 10, with Henr. Ledo and others, that, because (as he says) they were then witnesses not of the validity, but rather of the nullity of that marriage; and Croice, n. 845, agrees with Avers and Kugler, even if only one of the

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witnesses knew of the impediment. Coninck, d. 24. dub. 10. n. 84, and Tamborini, de matr. l. 8. c. 7. §. 3. n. 10, as well as Gobius and others apud Croice, ibid., deny this, because the presence of the parish priest and witnesses was prescribed by the Council of Trent, not so much to attest to the validity of the marriage, which may be unknown to them in many ways, as to prove the external celebration of the marriage, so that danger may be averted, lest those spouses enter into other marriages. Both opinions are probable, but the second seems more probable; for the Council, in session 24, c. 4, when requiring the presence of the parish priest and witnesses, already expresses the reason, namely, that no one should fraudulently contract more than one marriage, and it does not at all indicate that it wishes to require that the witnesses attest to the value of the marriage, and why?

[*Latin ed. p. 231*]

Because (as they say in Salm. de matr. c. 3, p. 5, n. 129, near the end), the Church does not bring forth witnesses to prove the validity of a marriage, but rather the external celebration of it.

4443. — Question IV. Is one who has falsely contracted marriage finally obligated by justice to validate it through true consent? Pal. d. 3, p. 7, §. 1, n. 3; Pont. l. 8, c. 5, n. 3; Conc. p. 385, n. 6; and Salm. ibid. n. 414, with Soto, Trull., and Avers., argue in the affirmative, because one has already given his body through his consent, and therefore, in order to maintain equality, the one who falsely consents is also obligated to give his body through true consent. However, Sanch. l. 1, d. 41, n. 5, with Nav., Soto, Angles, Henr. Man., and Arrag., as well as Gutt., Hurt., and Vill. apud Salm. ibid. n. 413, more plausibly deny this, and Pal. n. 2, Ratio, considers it probable, because, when a marriage contract cannot fail when one consents falsely, there is no delivery of the other, and therefore, no inequality remains; for he who has given true consent remains just as free as if he had given no consent at all. However, all agree that the one who falsely consents is obligated to validate the marriage through true consent, if otherwise, the damage caused to the other by that deception cannot be repaired.

4444. — Question V. If one has falsely, or out of fear, contracted marriage, must he inform the other spouse of the nullity of the marriage, if he later wishes to validate it? The first opinion affirms this, and Pont. l. 4, c. 24, n. 3, with Comit., as well as Pal. and Hurt. apud Salm. ibid. n. 447, hold this view, and Less. l. 2, c. 47, num. 72, Ratio, considers it probable, because, when there is no contract in that case, lacking the consent of the one who was afraid or falsely consented, there was also no consent of the other; and consent, which was lacking from the beginning, cannot become valid over time. However, the common and truer opinion teaches that it is sufficient that only the one who falsely consented or was afraid, gives his consent; and Less. lib. 2, cap. 47, n. 72, and cap. 45, n. 67, Nav. cap. 22, num. 80, with Host. and Jo. Andr., S. Anton. 3, p. tit. 1, c. 7, ad med.; Cont. Tourn.

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de Dispens. in spec. part. 1, cap. 7, v. Circa dubium; Boss. de contr. matr. c. 49, n. 383, and c. 2, n. 36; Ronc. p. 479, q. 3, with Laym.; Bon. q. 1, p. 9, n. 1; Sanch. l. 2, d. 31, num. 9, with S. Bonav.; Patud.; Sylv.; Ang.; Armilla; Tab. P.; Soto; Lop., etc., and Salm. de matr. c. 3, p. 5, n. 418, with Soto, Con. Trull., hold this view. This opinion is expressly held by St. Thomas in Suppl. q. 47, art. 4, ad 2, where he says: "Marriage does not take place from the free consent of the one who was first coerced, unless the prior consent remains in force in the other; therefore, if he dissents, marriage will not take place." Therefore, if the consent of the other remains, it is sufficient if the coerced one gives free consent. This is proven by c. Insuper 4, which concerns marriage accusations, etc., where the summary states: "The bride, who was unwilling, afterwards, knowing spontaneously,..."

[*Latin ed. p. 232*]

Marriage is not heard [in this case]. The same is held in c. Proposuit, concerning the one who is the leader: where it is said that when a certain man, ignorant of the matter, had taken a slave, after hearing that she was a slave, he knew her carnally; therefore, he was compelled to treat her as a wife. The same is found in c. Ad. id. 21, concerning betrothals: although she had initially been given to him unwillingly and resisting, nevertheless, because after a year and a half, it appears that she consented by living with him, she is to be compelled to return to the first marriage. Therefore, the consent of the party who is afraid, or fictitiously consenting, expressed through marital intercourse, or through cohabitation, suffices, together with the prior consent of the other party, to constitute a valid marriage. However, in order for the consent of the one who is afraid to be considered legitimate, it is required that she know that the first marriage was invalidly begun, as is well noted by Sanch. l. 2. d. 36. n. 3, Nav. c. 22. n. 36, and Cont. Tourn. loc. cit. v. The third condition, with Sylv. and Pirhing. The reason for our opinion is that it is certain that in the contract of marriage, physical simultaneity of the consents of the spouses is not required, but rather moral consent suffices; that is, if the consent of one morally perseveres, while the consent of the other is presumed. In our case, therefore, the marriage was null because the consent of the one who was afraid, or fictitiously consenting, was lacking; therefore, when the true consent of the other party has already preceded, and virtually perseveres through cohabitation, etc., as in the following passage, it is sufficient that the consent of the one who was afraid, or fictitiously consenting, be expressed, either through words, or through signs, namely through marital intercourse, or voluntary cohabitation, as taught by Sanch. l. 4. d. 48. n. 2, with S. Thom., S. Bon., Palud., etc., as is evident from the texts cited above. It is not valid to say that the consent of the other party, who was free from fear, or fiction, was null, since there was no contract; for it is answered that although the contract may have been null, and the consent of that party may not have had effect, nevertheless, there was a

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true consent, and therefore, when that consent morally perseveres, it is sufficient to revalidate the marriage, when the consent of the other party, who fictitiously consented, is added; just as if that party had withheld their consent, and then had subsequently given it. Furthermore, it is said by P. Cuniliati de matr. §. 29. n. 2 and 3, that it does not invalidate the matter, that the party who gave free consent, if she were again asked for consent, might perhaps refuse it; for this interpretative dissent is not a true dissent, but rather the consent previously given continues to persevere. Whatever may be objected to the contrary, I do not see how it can be answered to the canons cited above, and especially to the second in c. Ad id, de spons., where the case was that a certain girl, having previously contracted marriage without her internal consent, and then having considered those marriages invalid, had passed to a second marriage; but because she had lived with the first husband for a long time, the Pope ordered her to return to the first marriage, because it was presumed that she had already given her consent through that cohabitation.

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Although, from the beginning (we repeat the words of the text), it seemed that she had been given to him, yet, because after a year and a half she appears to have consented, it is necessary to consider the matter in relation to him. Therefore, the Pope did not have reason for the first judgment, namely, that the consent freely given by the man was invalid in that case, as if it fell upon unsuitable ground; but rather, he judged that the man's consent, persevering morally, and then joined with the consent given by the woman through her cohabitation, had already validated the first marriage, and therefore he ordered that the woman be obliged to return to it. The declaration of Clement VIII is objected, but our authors respond to it, as the response is given in n. 4440, v. Objection: The Pope, etc. 4445. - Question VI. Is it necessary, when a marriage was null due to some impediment, to make both spouses aware of the nullity of the marriage in order to validate it after the impediment is removed? The first opinion affirms, and this is held by the Pope in book 4, chapter 24, number 2; Pal. p. 7, § 4, n. 3; Boss. vol. 4, chapter 2, n. 71, and chapter 2, n. 336; Less. vol. 2, chapter 17, n. 76; Nav. chapter 27, n. 44, with Sylv. and Cov. and Sanch. vol. 2, d. 35, number 2, with D. Th. Scot, Caj, Abul, Palac, etc. The reason is, because this marriage cannot be made valid either by the first or by the second consent given after the dispensation: not by the first, because what was null from the beginning cannot be validated by the passage of time; not by the second, because this new consent is not valid unless it is given with the intention of contracting that marriage at that time, and this intention is not present in one who does not know that the previous marriage was null; for the man who consents at that time, ignorant of the nullity, indeed consents with error, believing that

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he is consenting to his already existing wife; therefore, since he errs in substance, the consent is of little value. The second opinion, however, which is held by Salm. de matr. chapter 3, p. 5, number 422, with Sot, Led, Rod, and Henr, also Pal, Ang, Gabr, and others, as cited by Boss. d. c. 2, n. 72, says that it is not necessary that the ignorant party be warned of the nullity of the marriage; but it is sufficient that, after the impediment is removed, the party who is aware of it accepts the consent of the other. This is proven by 4, from decision 687 of the Roman Rota, published by Farin with apostolic authority, as reported by Bossius vol. 4, chapter 10, n. 332, where it is said: We grant you, that, without the impediment of consanguinity, in the marriage contracted between you, you may remain, or you may freely and lawfully contract it anew, publicly, with the proper form of the council, with apostolic authority. This is proven by 2, by reason, because the prior consent, although lacking its effect due to an impediment imposed by positive law, was nevertheless valid according to natural law, since it was given to a person who was, according to natural law, capable of contracting marriage, as wisely considered by Benedict XIV, Not. 87, number 80. Therefore, it happens that, when...

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The impediment may be removed by dispensation, provided that, on the one hand, the spouse who is unaware of the impediment continues to consent in good faith, virtually through the use of marriage, namely through conjugal intercourse, voluntary cohabitation, and other external signs that proceed from the initial consent; and, on the other hand, the spouse who is aware of the impediment gives internal consent, expressed at least through similar external signs; then the consent of both is morally united, and the marriage is validated. And therefore, the Abbot, Gonzalvo Pelini, etc., say in Bossuet, vol. 1, chap. 3, no. 92, that the Pope can dispense in marriage without requiring a new consent. And, in fact, by Clement XI, through a brief issued on April 2, 1704 (as reported in the aforementioned work), certain marriages that were null from the beginning by some peoples of India, called the Pucueles and Quartarones, were validated without a new consent. However, in this matter (whatever we may have said in the first edition), it is most important to note what Benedict XIV declared in the constitution issued on September 27, 1755. Although, in the case where a certain man, who had contracted marriage in good faith, but invalidly due to a hidden impediment of consanguinity, requested that it be validated, and the wife, fearing the scandal of separation, did not know of the impediment, the Pope granted the request; at the same time (see there, § 7), he declared that, in the case where the impediment arises not from natural or divine law (as is the case when consent is given while the other spouse is living, or with a person of unknown servile condition), but from ecclesiastical law, then the Pope can properly dispense, so that

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the marriage may be contracted without a new consent from the party unaware of the impediment, considering the consent given by that party at the beginning to be valid, where, according to natural law, the consent was indeed valid; for in that case, the Pope removes the impediment at the root of the marriage, retroactively making the contract as if the impediment had been absent from the beginning. These are the words of the Pontiff: "Furthermore, the grace granted implies a dispensation at the root of the marriage, which has been customarily granted by the Roman Pontiffs in cases of great necessity, and when the impediment to marriage arises not from divine or natural law, but from ecclesiastical law; and by it, it is not made so that a marriage that was null is not contracted, but the effects are removed that, due to the nullity of such a marriage, had arisen before the dispensation was granted, and even in the very act of contracting the marriage." However, where such a special dispensation from the Pope is not available, one must not depart from the original opinion; especially because in the Letters of the Holy Penitentiary regarding dispensations for revalidating such marriages, the following clause is added: "That, once the woman is informed of the nullity of the prior consent, both may secretly contract marriage anew with each other." For, as Sanchez says in book 8, title 34, no. 64, and Bonaventure in question 2, paragraph 9, no. 8, and Tibuscio Navarrus in the Manual, etc., the aforementioned clause is not added as a condition, but as a simple...

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instruction, because otherwise this condition would often be rendered futile; furthermore, the clauses that are added as conditions are expressed in stricter terms; nevertheless, Benedict teaches in Not. 87, n. 68, that it is more likely to be a true condition, because, according to legal experts, the absolute ablative indicates a true condition, as demonstrated in *A testatore*, ff. de Condit. 4416. — I said, except in the case of urgent necessity; for if, due to knowledge of the nullity of the marriage, a prudent person can reasonably fear a danger of death, grave infamy, or scandal resulting from separation, and if, due to another impediment, the spouse is aware and cannot avoid fulfilling the obligation, then it is permissible to act according to the second opinion, as a probable one, because in that case, due to the necessity, it is permissible to follow even a merely probable opinion, as commonly taught by Sanch. l. 2. d. 36. n. 7 and 8, and Cont. Tourn. tract. cit. part. 1. cap. 12, at the end, see "Si autem." Carden. in proposit. Innoc. XI. d. 2. n. 684 and 697, Less. l. 2. c. 47. n. 77, Holzm. p. 447. n. 697, Bonac. qu. 2. part. 9. n. 7, Boss. tom. 4. c. 2. n. 78, with Con. and Fill., and Elbel p. 435. n. 344, with Laym., Sporer, Croiæ, and commun. Indeed (as Sanch., Viva, Carden., Croiæ, and others state, n. 482, see "Sed dices"), in a case of extreme or urgent necessity, it is permissible to act on even a tenuously probable opinion, because what would be improper with regard to the

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sacrament is not improper when necessity and the good of the soul are at stake. However, Sanch. rightly points out in n. 7 that such a scandal, when the impediment is on the part of the man, cannot ordinarily be feared. 4417. — Question VII. In how many ways can the consent of the party unaware of the impediment be renewed or demanded after the dispensation has been granted? Several methods are proposed by the authorities. The first method is if the bridegroom says: "When I married, I did not have true consent, now I wish to give it, and do you wish to give it?" This method is commonly accepted by the Doctors, and rightly so, and truthfully, because if there is no consent, there is no true consent; thus, Sanch. lib. 2. d. 36. n. 7, Carden. in prop. 4. Innoc. XI. diss. 2. n. 680, and Holzm. n. 697. The second method is if he says: "Tell me, please, if there had been no marriage between us, would you not intend to receive me again?" Thus, Sanch. n. 3 and 6, Salm. de matr. c. 3. p. 5. n. 124, with Con., Sa, and Dic. Ronc. p. 478. part. 2. r. 2, with Gobato, and also Sylv. and Rosella apud Boss. dq. Us. c. 3. n. 83, because in that case, it is equivalently demonstrated. However, Pont. l. 4. c. 23. n. 7 and Bosstus l. c. object to this method, with Henr., Gutt., and Fill., because (they say) in that case, the bride is consenting, intending to consent in her own name, since ignorance does not positively affect the will, and therefore, in that case, consent is not given as required, independently of the first. This opinion seems to me to be truer, unless (I would object) that from that petition, as mentioned above, the bride, unaware of the impediment, would already be raising a doubt, or suspicion, about the nullity of the marriage; in that case, she would already be expressing her consen-

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I am independent from the first. A third method is if the bridegroom says: "I am troubled by scruples concerning the validity of our marriage; therefore, let us renew our consent." Thus, Busembach, as above, Salmeron, *De Matrimonio*, chapter 3, page 5, number 424, with the Council of Trent, also Navarre and Cajetan, in *Controversae Tournenses*, in the same place, see. For, he who does not rightly admit this method; indeed, he is sufficiently (as it seems certain to me) to allow the bride to give a consent independent of the first; nor does it hinder that she did not have certain knowledge of the nullity of the marriage; for, in order that a new consent may be valid, it does not require that it be given with knowledge of certain nullity, but only that it be given independently of the first consent. A fourth method: "If you had not married me, would you not be married now?" Thus, Busembach and Salmeron, in the same place, with others. But this method is scarcely to be admitted, because in this way, truly, there is not present a positive consent. A fifth method: "For my consolation, I wish to contract marriage again; therefore, let us contract it anew." Thus, Anacletus, chapter 3, page 703, number 474; Sanchez, book 4, title 36, number 3; and

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Salmeron, cited, number 124, with Cajetan and Leander. But this method, rightly, is not admitted by *Controversae Tournenses*, in the same place, because through this, nothing is imparted to the other, nor is there doubt of the nullity of the first marriage. A sixth method, if, with marital affection on the part of the spouse who is aware of the impediment, which has already been removed by dispensation, an intention is expressed to express a new consent for marriage, while, on the other hand, the marital act is exercised with that same affection, based on the first consent given, and remains in effect until then. However, this method would only suffice at that time, when there is no place for the methods mentioned above, and, moreover, there is an imminent danger of serious harm, as Sanchez, book 2, title 36, number 9; Tiburtius, *Navarr. in Man. ad prax.*, page 2; *Controversae Tournenses*, in the same place, see; Bonaventure, page 2, page 9, number 7; the Author, *Institutiones per lii nov. conf.*, page 2, chapter 15, number 326; Vitalian, book 4, article 3, number 8; Salmeron, ibid., number 125, with Soto, Cajetan, *Concordia Gutturalis*, and Rodriguez, also Sayro, de Leone, and Giribald, in Benedict XIV, *Notitia*, 87, number 74, who does not disapprove. Nor, at that time, does the clause of *certioration* hinder, which is added by the Sacred Penitentiary, who (as Tiburtius Navarrius says, in Benedict XIV) is considered by the Holy See to relax this condition in cases of necessity, providing for a better way in which the good of souls may be promoted, since such a condition is then morally impossible to fulfill. Therefore, in this case, this method can licitly be put into practice, since it is very probable (as we have shown, number 4414) that the consent of the party aware of the impediment, expressed through the marital act, is sufficient, with the consent of the other virtually remaining.

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DOUBT IV. In what cases, and for what reasons, may a dispensation be granted in impediments to marriage? 1118 In which impediments can the Pope grant a dispensation? 1119 Can the Pope ever grant a dispensation in matters of natural law? 1120 Can a dispensation ever be granted in impediments arising from natural law? 1121 Can a Bishop grant a dispensation in impediments that are prohibitive? 1122 Q. I. Can, in cases of urgent necessity, a dispensation be granted for impediments existing before the marriage is contracted? 1123 Q. II. Can a dispensation be granted after the marriage has been contracted? 1124 Q. III. Is it required, in such cases, that the marriage be contracted in good faith? 1125 Q. IV. Can a Bishop delegate this power to another? 1126 Can Bishops grant dispensations in all impediments that prevent marriage by human law, or that arise after the marriage has taken place? 1127 Can religious persons grant dispensations to obtain an indulgence? 1128 Can they themselves grant dispensations from the vow of chastity in order to contract marriage, in cases of urgent necessity? 1129 What are the just causes for granting a dispensation in

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prohibitive impediments? 1130 Are other sufficient causes added? Is the provision of a larger sum of money sufficient? 1131 Note 1. What must be explained to ensure that the dispensation is not obtained surreptitiously? Note 2. Does the truth of the reasons pertain to the validity of the dispensation? 1132 Q. 1. Does the dispensation cease when the cause ceases? 1133 Q. 2. What should be done if there is doubt whether the cause was falsely alleged, or whether it was truly alleged? 1134 Q. 3. Should it be expressed in the petition that an incestuous union has been consummated with the intention of obtaining a dispensation? 1135 What if the union was not entered into with such an intention? 1136 Q. 4. Can a more distant degree of relationship be manifested, concealing a closer one? 1137 Q. 5. Should the petitioner express that a previous dispensation has been obtained? 1138 Q. 6. If a person has multiple impediments of the same kind, should all of them be expressed? 1139 Q. 7. Can dispensations for multiple impediments be obtained separately? 1140 Q. 8. If, after obtaining a dispensation, a person discovers a consanguineous relationship with the spouse, is a new dispensation required? 1141 Q. 9. If an incestuous union occurs between the betrothed, before the execution of the dispensation is commanded, is a new dispensation required? 1142 Q. 10. If the contracting parties belong to different dioceses, must each be dispensed by his own Bishop? 1143 Q. 11. What are the clauses in dispensations granted by the Holy Penitentiary? 1144 Q. 12. In which impediments can the Holy Penitentiary grant a dispensation? 1145 Note 1. For the validity of a dispensation, the consent of the person who benefits from it is not required. 1146 Note 2. What should be expressed when a dispensation is requested from the Dataria? And what should be expressed when it is requested from the Holy Penitentiary? 1147 Formula of petition to the Holy Penitentiary for obtaining a dispensation from an impediment, or from a vow of chastity, in order to celebrate, or renew, marriage. 1148 Formula for executing such dispensations. 4448. — ANSWER. The Pope cannot grant a dispensation in impediments.

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By natural law, or by divine law, unless by a special dispensation: but in those matters which are regulated by ecclesiastical law, he can. The reason for the former is that a lower authority cannot dispense in the law of a higher authority; nor can a man in the law of nature. I have added, "unless by a special dispensation," because the Pontiff (but not the Bishop) can dissolve a valid marriage for a just cause. See Sanchez, Lessius, *Praepositiones*, question 5, chapter 8; Diaz, page 8, volume 4, response 52 and 93. The reason for the latter is that the Pontiff introduces such impediments; therefore, he can also remove them, and indeed, he alone can.

1449. It is questioned whether the Pope can ever dispense in an impediment of divine law. To answer this question, it is necessary to preface it

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with a general distinction, namely, whether the Pope can ever dispense in matters of divine law. In those matters in which divine law arises from human will, as in vows and oaths, it is certain that the Pope has the power to dispense; for then, although he does not abolish the divine law itself, he removes the foundation of the obligation which man has imposed upon himself through a human act: and when this foundation is removed, the obligation of divine law ceases; see Sanchez, book 8, chapter 6, number 2, where he asserts that this is common with Thomas and others. A greater doubt arises as to whether the Pope can dispense in a divine law which derives solely from divine will. There are three opinions. The first opinion generically affirms this, and it is held by Abbas and two others, as cited by Sanchez, number 3, who rightly rejects it. The second opinion, held by Sanchez, number 5, along with Navar, Cano, Felin, and others, states that the Pope cannot dispense in the entire body of divine law, but only in a particular case in which the observance of the precept is not essential. From this, he infers that he cannot dispense in cases such as those concerning not abstaining from fornication, not changing the matter and form of the sacraments, and similar matters; because transgression in these matters always contains the greatest impropriety, which outweighs any cause; but he can dispense in matters such as the residence of Bishops, in a valid marriage, in the consecration of the Eucharist under both species (but this we have denied concerning the Eucharist, book 6, number 496, see Doubt 2), and similar matters, because in these cases, a just cause may arise which outweighs the impropriety that the precept considered. The third opinion, which is more common and more probable, states that the Pope can never dispense in those things which are of absolute divine law; this is held by Pontius, book 8, chapter 3, number 2; Suarez, book 40, chapter 6, number 6; and Paleario, volume 4, treatise 3, on law, book 6, page 3, numbers 5 and 6, along with Salas, Covarrubias, and Sylvestri, from *Decretum Gratiale*, 4, 2, question 97, article 4, ad 3, where he says: "Just as in public human law, one cannot dispense unless he from whom the law derives its authority, so in the precepts of divine law, which are from God, no one can dispense except God, or he to whom He has specially entrusted this power." However, this special entrustment (as Paleario rightly says) is not derived from those words:

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"And whatever you shall have loosed upon earth, it shall be loosed also in heaven; and forgive your debtors, and your heavenly Father also shall forgive you. For if you will forgive men their offenses, you shall also be forgiven by your Father who is in heaven. But if you will not forgive men their offenses, neither will your Father forgive you your offenses." These words, although general, do not contain a special commission; moreover, such dispensations in divine law would be harmful to the unity and stabil-

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ity of the Church. It is very probable, as Suarez states in *De Euch.* d. 43, s. 4, v. Tertia sententia, and as Soto, Palencia, Suarez, Valentia, Durando, Major, Navar, and others cite in Sanchez, that the Pope, in a particular case, cannot dispense, but rather declare that divine law does not obligate. The reason is that this power was necessary because of the variety of human affairs; otherwise, God would not have provided sufficiently for the good governance of the Church.

Therefore, concerning the question of marriage, I say:

1. The Pope cannot dispense in impediments of natural law against the *Vivas in prop.* 4, condemned by Innocent XI, n. 39, and by the Cardinal in the same proposition, 4, d. 3, n. 591. Nor does the response of Urban VIII, which they object to (and which we cited in n. 902), present an obstacle, for it is clear from what Cardinal Ximenes states there that it was not a dispensation, but a mere declaration for that particular case.

2. It is fitting that the Pope, in a case of urgent necessity, can declare a marriage to be valid, notwithstanding an impediment that probably pertains to natural law, as he has in fact declared, as we saw in n. 4445, Clement XI.

3. It does not present an obstacle that Sanchez states in *l.* 8, *d.* 6, n. 40, that the Pope, in such impediments, cannot dispense, nor can he declare that the impediment does not affect the validity of the marriage, because (as he says) if this path were opened, it would be easy to grant dispensations or declarations in the Church, and thus many material fornications could occur. The response is that when the Pope declares that an impediment does not affect the validity of the marriage in such cases, he acts as the universal doctor of the Church, in whom he cannot err, and he could not assert the opposite without great temerity; as Benedict XIV states in *De Syn.* c. 6, "Concerning the power of the Pope, after he has dispensed, to doubt is like sacrilege."

4. A bishop cannot, by ordinary right, dispense in impediments that prevent a marriage already contracted, except by tacit concession in a case of necessity, when the following conditions are present: 1. That the impediment is dispensable. 2. That it is hidden, that is, not notorious or divulged. 3. That, on the other hand, at least the marriage was contracted in good faith. 4. That access to the Pope is not easy; thus, Sanchez states in *Con. M. Per.* d. 4, s. 7. However, when a marriage is contracted by a surreptitious dispensation, the bishop cannot confirm the prior dispensation with his own dispensation. See Duran, *p.* 9, *t.* 7, *r.* 40, and Prap. Per. etc. In impediments that prevent a marriage from being contracted, it seems that a bishop, and indeed not even a legate *a latere*, can never dispense, except with special authority. See Layman, *l.* 5, *tr.* 40, *p.* 4, 6, 6, and *l.* 4, *t.* 4, c. 22, and Bonaventure, *q.* 3, *p.* 45, etc. Against whom Duran states in *p.* 8, *t.* 3, *res.* 280, along with Villalobos and Escobar in *de leg.* e. 14,

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o. 4, that a bishop...

[*Latin ed. p. 240*]

The purpose of this dispensation can, in a rare case, and due to a very urgent reason, be granted if, after all attempts have failed, it is judged necessary to avoid a grave dishonor or a grave scandal, which could not otherwise be prevented, and this is done with the tacit permission of the Pope. 4422. — Question I. Can a Bishop grant a dispensation from a diriment impediment before marriage, in a case of urgent necessity? See what is said in book 6, number 613. However, here, we maintain a firm opinion with the common Doctors (contrary to Bus.), provided that a true necessity exists, such as if there is a danger of death; or if the marriage is necessary to legitimize children, or to avoid dishonor to a woman, or other damages; or if a noble woman (as Salm. de matr. c. 44. p. 4. n. 44. says, or an honest woman, even if not noble, as the Council says better, p. 343. n. 5.) was prepared to contract marriage on a certain day, and revealed the impediment in confession. The reason is that, in such a case, either the Pope himself is presumed to grant the dispensation, or the reservation is entirely removed, as in chapter 2 on dispensations for the young, where it is stated: "We strictly forbid anyone from being joined in marriage before the age prescribed by the canons, unless, perhaps, a very urgent necessity intervenes, so that such a union may be tolerated for the sake of peace." The word "tolerated" is interpreted by Pont. l. 8. c. 43. n. 6. and Salm. d. n. 41. as meaning a true dispensation, saying that this tolerance is not a permission, but an approval. Ronc. p. 494. q. 1. r. 2. adds, with Pignat. and Tamb., that even if the impediment is public, the Bishop can grant a dispensation, when the same reasons exist that are sufficient to grant a dispensation from a hidden impediment. But I believe that this opinion can rarely have a place in practice, because, when the impediment is public, the reason for scandal ceases if the betrothed abstain from such a marriage; indeed, they are especially obliged to abstain from marriage in order to avoid scandal. 4423. — Question II. Can a Bishop ever grant a dispensation from a diriment impediment after marriage has been contracted? Sot. Cord. Med. and Ven. ap. Sanch. l. 2. d. 40. n. 2. deny this, because (as they say) Bishops can do nothing against the law of the Pope. However, the Doctors commonly affirm this in the case where there is no easy access to the Pope, and where the danger of death, dishonor, or scandal is imminent if the spouses are separated; or of incontinence, if they are not separated, as Cabass. T. J. l. 3. c. 27. n. 7. Merb. t. 2. p. 464. q. 5. Nat. Alex. de matr. ar. 43. reg. 10. Cont. Tourn. tr. de dispens. in spec. part. 4. cap. 47. art. 3. regula 2. Conc. p. 343. n. 4. with the common opinion, Pal. d. 4. p. ult. §. 4. n. 7. Bon. q. 3. p. 42. n. 43. Barb. all. 35. n. 3. Sanch. l. 2. d. 42. n. 3. with Abb. Gutt. Gom. etc. Salm. ibid. n. 7. with Con. Avers. Cornejo, and Henr. ac Escob. l. 27. n. 682. with Nav. Vasq. Hurt. Salas, etc. The reason is that, in this case, just as was said

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in the first question, the Pope is presumed to consent, especially since He already has knowledge of this matter.

[*Latin ed. p. 241*]

The opinion commonly transmitted by the Doctors is this. However, Croia, book 7, number 143, and Felice, Potissimum, number 3345, rightly observe that if a dispensation can conveniently be obtained by letter from the Sacred Penitentiary, then the Bishop cannot grant a dispensation, even if, as Croia states (book 6, page 3, number 835), several material acts of fornication have occurred in the meantime. These acts are called "material" because, as we stated concerning Penance, number 641, with the common Doctors, and adding to this Contenson, *Tractatus*, part 1, chapter 12, at the end, and Sylvester against the Protestant Synod), if the spouses are in good faith, they are to be left in that state, when there is danger of infamy, scandal, or incontinence, if they are warned of the nullity of the marriage.

4424. — Question III. In the aforementioned case, is it required that the marriage have been contracted in good faith? It is certainly not required that there be good faith on the part of either party, as commonly stated by Sanchin, book 2, chapter 40, number 4; Pontedamense, book 8, chapter 43, number 4; Merbes, volume 2, page 494, question 5; Concilium, page 343, number 7; Salmeron, *De Matrimonio*, chapter 14, page 1, number 8, and others. The reason is, first, that when there is good faith on the part of one spouse, the marriage is already considered to have been contracted in good faith, as evidenced by the canons "Cum Inhibitio, de clandestinis dispensatiis" and "Ex tenore, qui filii sint legitimi"; second, that the malice of one should not harm the other.

The question arises: Can the Bishop grant a dispensation if both parties contracted the marriage in bad faith? Some, such as Dicens and Henry, cited by Salmeron, *ibid.*, number 9, affirm that he can, because, as they say, even if they contracted the marriage culpably, the Pope is not presumed to reserve the granting of a dispensation to himself in such a case. However, it is more commonly and truly held that the Bishop cannot grant a dispensation, as stated by Pontedamense, book n, number 4; Palafox, book 4, page at the end, section 1, number 7; Barbatus, *Alias*, 35, number 5; Escobar, book 27, number 687; Sanchin, book n, number 4, with Ledo, Cordes, Lopez, and Veracini, and Salmeron, *cited*, number 9, with Contenson and Aversa. The reason is that in the Council of Trent, session 24, canon 5, it is stated: "If anyone should presume to contract marriage knowingly among the prohibited degrees, let him be separated, and let him be deprived of the hope of obtaining a dispensation... for he is not worthy who easily experiences the benignity of the Church, whose salutary precepts he has rashly despised." Otherwise, there would be an opportunity for marriages to be celebrated daily, in contempt of impediments.

However, for someone to be said to have contracted marriage in bad faith,

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it is not enough that he knew of the impediment, but it is required that he knew that such an act would create an impediment; so state Sanchin and Concilium, *cited*, and Salmeron, *De Matrimonio*, chapter 14, page 1, number 40, with Bannitus, Candido, and Aversa. Sanchin and Salmeron, *cited*, add that it is not enough that the ignorance was crass, because truly, one does not say that someone acts "knowingly" (as the Council states) if he acts with crass ignorance, as also taught by Navarret, chapter 36, number 144, declaration 4. Conversely, if the ignorance is so crass that it appears to be temerity, as stated by Sanchin and Salmeron, *cited*, the same must be said if the betrothed voluntarily omitted the proclamations: then, even if they contracted the marriage unknowingly, the nullity of the marriage, a dispensation is to be denied to them, as the Council of Trent, *cited*, states, saying that if someone did this unknowingly,

[*Latin ed. p. 242*]

If, indeed, the required ceremonies for contracting marriage are neglected, they shall be subject to the same penalties. 4425 — Question IV. Can a Bishop, in a case where he can grant a dispensation for a diriment impediment, delegate this power to another? Sylv., Medina, etc., deny this, as cited by Sanch. in book 2, chapter 40, paragraph 43, because (as they say) Bishops cannot delegate such powers unless this power has been specially granted to them; they prove this from the Tridentine Council, session 24, canon 6. It is permissible, where it is granted to Bishops to absolve from papal censures, and it is explained there, either by themselves or by a vicar; therefore, in order for a Bishop to delegate such powers, a special concession is required. However, Pont., in book 8, chapter 43, paragraph 5, Pal., in book 4, final paragraph, section 4, paragraph 43, Barb., in all 35, paragraph 14, Escob., in book 27, paragraph 695, Bon., in question 3, page 45, paragraph 6, Sanch., in the aforementioned place, paragraph 14, along with Ang., Sylv., Con. Cord., Lop., and Salm., in the same place, paragraph 42, along with Con. Aversa, Leand., and Henr., commonly affirm this, and (as they say, Sanch., paragraph 46, and Pal., and Salm., along with Aversa, and Guttier.) not only for a particular case, but also for all cases, both present and future. The reason is that since this power is not attached to the person, but to the dignity and office, it is not said to be delegated, but rather ordinary, and therefore it can be delegated properly, as we said in book 4, paragraph 190, and in paragraph 493. The Tridentine Council does not contradict this; for Sanch. and Pal., along with Guttier., respond that the Council intended to explain only that the vicar does not have this power by virtue of a general commission of the vicariate, but requires a special commission from the Bishop; but it did not intend to deny Bishops the power to delegate. 4426. — "Response 2. Bishops can universally grant dispensations for non-diriment impediments. I add that those are excepted which, by natural and divine law, impede, such

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as a perfect and absolute vow of chastity, as Bon. in question 3, page 45, from Navar., Sanch., etc." (But in a marriage that has been contracted, they can grant a dispensation to petition for the debt incurred in a vow made either before or after the marriage; see the statements in paragraphs 986 and 987) and prior betrothals: as Tanner states, article 8, question 4, book 2, paragraph 30, from Sanch., in book 7, chapter 47, paragraph 8. The same is stated by Fill., in volume 10, part 2, chapter 40, paragraph 306, Laym., in book 5, chapter 40, paragraph 4, chapter 45, paragraph 2, at the end. Similarly, a Bishop can grant a dispensation in impediments that arise after the marriage and impede the petition for the debt, e.g., spiritual consanguinity or affinity. Bon., in the aforementioned place, Sanch., in book 8, chapter 42, paragraph 46, Fill., in the aforementioned place, where he excepts incest committed (after the marriage has been consummated) with relatives of the wife, in those who are not young. (But Sanch., paragraph 43, expressly teaches the opposite, see the statements in paragraph 1076.) 4427. — "Response 3. Approved regular confessors can also..." (That is, Benedictines, Mendicants, and all others who share in their privileges, as Sanch., in book 8, chapter 46, paragraph 3, and 8, Pont., in book 8, chapter 43, at the end, Pal., in the final paragraph, section 4, paragraph 48, and Salm., in de matr., chapter 46, page 4, paragraph 6).

[*Latin ed. p. 243*]

With Gutt. Rodr. Aversa, and Candido), • regarding the granting of permission, by their Superiors, to fulfill the conjugal debt, due to the • knowledge of a consanguineous spouse in the second degree, as Rodr. regul. t. 4. q. 63. art. 4. states, but without any impediment in itself. See • Mar. Perez d. 44. s. 7. n. 43. I said, Superiors: because what • Molf. Leon. etc. desire, that all confessors of the Society of Jesus should have this power immediately from the General, is refuted by Diana p. 3. t. 2. res. 14. • (See the aforementioned n. 1076. v. Also.) 4188. — It is asked: can Regulars dispense in the vow of chastity to contract marriage, if a great necessity arises, namely, if the marriage cannot be morally postponed, and if some other danger of infamy or scandal threatens? Commonly, Doctors teach that confessors, both Mendicant and other Religious, communicating in privileges, can dispense in all vows, in which Bishops, by ordinary right, can dispense with their subordinates, due to several privileges, namely, Innocent VIII in a certain bull which Rodr. cites; also Martin V, Eugene IV, Julius II, Paul III, and Gregory VIII (which extends even to sworn vows), as Sanch. l. 4. d. 34. n. 4. Pont. l. 8. o. 40. n. 9. Less. l. 2. o. 40. n. 134. Pal. t. 3. tr. 45. p. 43. n. 7. Reiffent. dist. 3. n. 44. Sporer de voto, c. 2. n. 54. Elbel eod. tit. n. 274. and Salm. de voto c. 3. p. 44. n. 94. with Navar. Lopez, Arrag. Fag. Trull. Cand. Villal. etc. Hence, we said n. 987. v. But can Regulars, indeed, dispense in the vow of chastity emitted before, or after marriage, to fulfill the conjugal debt? But it is doubtful whether, in a case of urgent

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necessity, as Bishops can dispense (according to the aforementioned statements about the vow l. 4. n. 258. v. Note II.), Regulars can also dispense to contract marriage? The first opinion affirms, and this is held by Reiffent. l. 5. Decretal. tit. 34. n. 40. Vidal. de voto inquis. 3. n. 77. Ant. à Spir. S. tr. 2. d. 3. n. 84. also Bassæus, Herincæ, Crousers, etc. ap. Elbel t. 2. de voto p. 90. n. 279. (who consider it probable; and others apud Salm. ibid. n. 97.) who likewise call it probable. The reason is, because Bishops, in a case of necessity, dispense in the vow of chastity by ordinary right, according to the aforementioned statements n. 4425. Therefore, Regulars, who can dispense in all vows in which Bishops dispense by ordinary right, can also dispense in this case of urgent necessity. The second opinion, however, which is more common, denies this, and this is held by Sanch. l. 2. d. 40. n. 9. Pont. l. 8. c. 40. n. 44. Barb. all. 37. n. 14. Sporer tr. 3. n. 74. Pal. de voto d. 4. p. 42. n. 7. Laym. l. 4. tr. 4. c. 8. n. 47. Tamb. l. 3. c. 46. §. 4. n. 54. and Salm. de voto c. 3. p. 44. n. 96. with Suar. Leand. Diana, Lez. Bardi, Prado, Moya, and Rodr. The reason is, because Regulars can only dispense in vows in which Bishops dispense; but in necessity, Bishops do not dispense.

[*Latin ed. p. 244*]

By ordinary right, but by extraordinary and accidental means, and this concerns cases that are not ordinarily, but extraordinarily, occurring. But the opponents reply that the fact that the cases are extraordinary does not mean that Bishops dispense by extraordinary right, for even in these cases they have ordinary power, which is attached to their office and dignity. Therefore, I do not dare to reject the first opinion. 4429. — Resp. 4. In order to lawfully dispense in cases of impediments, a just cause is required, such as those mentioned in Filic. c. 8. v. gr. 4. Extinction of a great dispute or hatred between relatives. 2. Removal of scandal. 3. Inequality in the marriage, unless with relatives or affines. 4. Lack of a competent dowry. 5. Preservation of assets within the same family. 6. The merits of the one requesting the dispensation. See more in Sanch. d. 49. Coninch. d. 33. Hurtad. d. 26. Mar. Perez d. 44. sect. 5. where it is noted that 4. The closer the degree of consanguinity or affinity, the more serious the cause required. 2. Often, several combined causes are sufficient, of which each individually would not be sufficient. See also Dian. p. 8. t. 3. r. 93. Resp. 5. If someone doubts whether there is an impediment, e.g., to contracting marriage with a certain person, and with sufficient diligence, cannot ascertain the truth, it is probable that they can contract the marriage without a dispensation (unless some presumption exists for an impediment), because possession is considered as freedom to contract. Sanchez, Sancius, Franc. Lugo, Bard. d. 6. c. 44. p. 7. §. 44. (contra Laym. et Pal.) » (But see the statements in n. 902. Qu. III. v. They say, where we have refuted the opposite with Laym. Pal. Less. Cont. Tourn. Ronc. etc.) 4430. — In addition to the causes given by Busemb. for lawfully dispensing, Salm. de matr. c. 14. p. 2. n. 24. adds

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the cause of restoring a marriage validly contracted: and even in bad faith, if the marriage has been consummated, or there is a reputation of having had intercourse. Also, necessity of assistance, for example, if a woman, due to the absence of her husband, cannot attend to legal matters or provide for her children. Also, the woman's age exceeding 24 years. Also, the danger of deviation from the faith. Also, the provision of a larger sum of money: the Council writes p. 348. n. 9. that this cause of money is displeasing to them, so that the Church dispenses in cases of impediments because of it: they are surprised that after the Council of Trent said that dispensations should be granted freely, Doctors assign as a cause for granting dispensations that they are not given freely. But generally, the authorities admit this cause as Sanch. l. 8. d. 49. n. 35. Salm. ibid. n. 26. in fin. Pal. d. 4. p. ult. §. 2. n. 2. and Pope Benedict XIV. Notif. 87. n. 26. with Pal. in Trid. And rightly, because such arrangements (as Innocent X ordered) are not mixed with other funds of the treasury, but are reserved in the Monte di Pietà, and are not withdrawn from there except by order of the Pontiff; as in the case of...

[*Latin ed. p. 245*]

Pious considerations are involved. Therefore, when such a payment is made to assist the poor, it is a perfectly just reason for the Church to grant a dispensation, as it frequently does. Nor should the objections of heretics be heeded, as Father Concina points out, for they are manifestly unjust. 4431. — It should be noted, however, that in order for the dispensation to be valid, all impediments present must be explained, and it must be determined whether they are carnal or spiritual; also, whether the impediment is direct or collateral. Is it sufficient to simply state the degree of remoteness? See below, n. 4436. Question 4. It should be noted that in the Constitution of the Supreme Pontiff Benedict XIV, which begins with "Ad apostolicæ servitutis" (see at the end of this work), issued on February 25, 1742, it was declared that the expression of the reasons for the dispensation, and their verification, are essential for its validity. Therefore, the Supreme Pontiff commanded all procurators, etc., to inquire from the petitioners about the true reasons, and to present them honestly, under penalty of perjury; and he imposed upon Bishops, and others to whom the execution is entrusted, the duty of investigating the truth of the reasons stated in the apostolic letters. From this, several very useful questions can be added in practice regarding this matter of dispensations. 4432. — Question 4: Does the dispensation cease when the reason for the dispensation ceases? The answer is: yes, if the reason ceases before the dispensation is granted, or before it is issued by the Bishop to whom it has been delegated by the Pontiff. Otherwise, if the reason ceases after the dispensation has been granted and issued by an inferior authority, even if it ceases before the marriage is celebrated. The reason is that the impediment has already been removed by the dispensation, or the law has been relaxed, and the obligation of which it

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is a part is extinguished; if the reason ceases afterwards, it does not revive in any way; thus, very probably, in Pontif. l. 8, c. 20, n. 3; Pal. de privil. d. 4, p. 15, n. 7; Suar. de leg. l. 6, c. 20, n. 15; and Salm. de matr. c. 14, p. 2, n. 29, with Sa and Sylv. contra Sanch. Dic. etc., who, however, call this probable; see also the words in l. 4, n. 496, v. Question, however. 4433. — Question 2: What should be said if there is doubt whether the reason, falsely alleged, was final, or impulsive? Or whether the reason was true, or false? Answer: In all such and similar cases of doubt, the dispensation should be considered valid; because in case of doubt, one must adhere to the validity of the act; thus, Sanch. de matrim. l. 8, d. 21, n. 20 and 25; Pontif. l. 8, c. 17, n. 41; Pal. de privil. d. 6, p. 16, §. 4, n. 3; and Salm. ibid. n. 37, with Dic. Gabr. etc. 4434. — Question 3: When a dispensation is requested for marriage between relatives, should the incestuous relationship between them be stated? It is commonly held that if the relationship has been consummated by both parties in order to more easily obtain the dispensation, and the relationship is alleged as the sole reason for obtaining the dispensation, then that wicked intention must necessarily be stated; otherwise, the marriage will be null, because no one should benefit from his own crime; all the more so because the Pontiff is moved by this to impose a greater penance, or a monetary composition.

[*Latin ed. p. 246*]

In order that men may be more deterred from such a crime, it is commonly held, as stated by Sanch. lib. 8, d. 25, n. 38; Pal. d. 4, p. ult., §. 3, n. 9; and Salm. de matr. c. 14, p. 3, n. 42, among others. This is also expressed in the bull *Innoo. XII*, renewed by Benedict XIV through the bull *Pastor bonus*, §. 42, where it is stated: "If any petitioners, having obtained a dispensation from the Dataria regarding the impediment of the first and second degrees, or the second degree alone, of consanguinity or affinity, with the explicit mention of a carnal union, but with a tacit, concealed, and malicious intention present in that union, in order to more easily obtain the dispensation, should appeal to the aforementioned Pantientiaria for the validation of such a dispensation, then the same Major Pantientiarius may, in turn, absolutely grant dispensations to those persons who explicitly affirm that they have obtained dispensations from the Dataria under the aforementioned conditions. However, he shall not grant dispensations to those who have not been dispensed with as poor, unless first the debt is paid to the Dataria, for the purpose of providing alms, the amount to be determined at the discretion of the same Major Pantientiarius." Pal. and Salm., in the aforementioned passage, state that the petitioners are not required to express the aforementioned bad intention, if it is only conceived in the mind, because, as they say, "in that case, the crime of a wicked intention does not fall under the jurisdiction of the Church." However, I do not agree with this opinion; for here we are not dealing with punishment, but with

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a dispensation, which the Church can certainly refuse to grant if there is a crime of a wicked intention, just as the Church can exclude those who do not perform an internal work in the granting of indulgences, as taught by Suar. de pæn. d. 52, sect. 5, n. 5, and Bon. de indul. d. 6, q. 4, p. 5, n. 29, among others. It is very likely, as stated by Salm. ibid. n. 43, among others, that if other causes sufficient in themselves to obtain the dispensation are presented in the petition, and at the same time the pre-existing union is presented (which must always be presented, as we will see shortly in the following section), then it is not necessary to allege the circumstance of bad faith, namely, that the union was consummated in order to more easily obtain the dispensation.

4435.– But returning to the question, others say that the marriage is valid if the betrothed have omitted the circumstance of the union in their petition, if that union was pre-existing without a wicked intention of obtaining the dispensation more easily; thus, Pont. l. 8, o. 47, n. 32, and Salm. de matr. c. 14, p. 3, n. 40, with Henr. Perez, Hurt. Vega, Vill., etc. But it must be held that there is no such thing, as taught by Sanch. l. 8, o. 25, n. 8; Laym. l. 4, tr. 4, o. 22, n. 48; Pal. d. 4, p. ult., §. 2, n. 4; and also Con. Diana, Gutt. Reb. Fill., etc., apud Salm. ibid. n. 39. And on this point, there is no longer any doubt today, as stated in the bull *Pastor bonus*, Summ. Pont. Bened. XIV., §. 44, where it is stated: "If... they have obtained from our Dataria a dispensation regarding the prohibited degree in the first and second, or in the second alone, and also in the third or *quarto*, and they conceal the union that has taken place between them..."

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In order that they may not be detected to the detriment of honor...; the Major Ventientiarius, if he still conceals secrets, may grant such a dispensation, or, respectively, a revalidation, only in the forum of conscience; provided, that when it concerns the first and second, or the second alone, a sum of 50 ducats of gold must be transferred from the Camera to the Dataria..., unless prior grace has been granted in the form for the poor. From these considerations, note that the Pope, in saying that he can grant a revalidation, does not consider marriages contracted with such concealment to be valid; all the more so, because in the degrees mentioned above, the dispensation is more difficult to obtain due to the circumstances involved.

4436. — Question 4. Can a more distant degree of consanguinity, or affinity, be manifested by concealing a closer one? Sanchez affirms in book 8, title 24, paragraph 28, number 28; Pontius affirms in book 8, chapter 47, number 26; and Salm affirms in book 4, page 4, number 46, along with Sylv. and Pontus in *Controversiae Tournenses* on dispensations, in the special part, chapter 4, article 1, see Observation 2. They infer this from a certain *Motu Proprio* of the Most Holy Pope Pius V, in which it is stated that a dispensation obtained without mentioning a closer degree (namely, if the

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spouses are related in the fourth and third degrees) cannot be considered free from the vice of deception or trickery, but can be afterwards validated by declaratory *Litterae* concerning the closer degree. Therefore, they say that such *Litterae* (by which it is declared that a closer degree does not impede the marriage) are required only in the external forum to avoid scandal, and not if there is no scandal. However, contrary to Corradus, in *Controversiae Tournenses*, in the same place, see Observation 2, who said that marriage is null without these *Litterae*, Benedict XIV declared in a *Brevé*, *Etsi matrimonialis*, dated September 27, 4755, that marriage is indeed illicit, but not invalid, provided that the consanguinity is not of the first or second degree. Furthermore, Cont. Tourn. in the aforementioned place, see Observation 2, correctly points out that in a mixed degree, the sex that is in the first degree must be expressed, because it is more difficult to grant that a nephew should marry his aunt, than that a paternal uncle should marry his niece: for it is a greater perversion of order that a nephew should be placed as the head of his aunt.

4437. — Question 5. If someone requests a second dispensation on the same matter after having obtained a first one, must he express the first one? The answer is affirmative, when the impediment is from the same crime, because a relapse deters the Superior from granting a dispensation. Otherwise, if the impediment is not from any crime, or is from a different crime; thus Conc. on page 354, number 23, with Cuninch and Aversa, and Salm. on marriage, chapter 14, page 4, numbers 47 and 48.

4438. — Question 6. If someone has several impediments of affinity of the same degree, for example, if he knows two sisters of his bride, must he express both unions in the petition for a dispensation? Vega, Henr. Led., and Man. affirm this in Escob. book 27, number 747; but it is more probable that Sanchez affirms this in book 8, title 24, number 5, Pontius affirms this in book 8, chapter 47, § 5, number 5, and Conc.

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Q. 352. N. 43. Anacl. p. 704. N. 465. Salm. ibid. N. 54. Cum Aversa, et Pal. et Escob. N. 748. Cum Mol. Hurt. Con. Villal. Diana, Leand., ac Rota Rom. Ratio, quia in simplici non comprehenditur mixtum; et licet hæc impedimenta non sint specie diversa, sunt tamen numero distincta. Et de hoc hodie non amplius dubitandum; nam sic omnino tenendum esse declaravit Bened. XIV. in Brevi, Etsi matrimonialis, jam supra relato n. 4436. Et idem dicendum de aliis impedimentis consanguinitatis, cognationis spiritualis, publicæ honestatis, etc. ut Sanch. et Anacl. ll. cc. 4439. — Quær. 7. An si concurrant plura impedimenta, possit divisim impetrari eorum dispensatio? Adest triplex sententia. Prima sententia affirmat, et hanc tenent Salas, Rodr. et Sa. ap. Salm. de matr. c. 14. p. 4. n. 52., et probabile vocant ibi Villal. Dicast. et alii, quia nullibi ex jure habetur requiri, quod impedimenta simul exponantur. Secunda sententia negat, quam tenent Sanch. l. 8. d. 23. n. 2. Pont. l.

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8. c. 47. §. 4. Pal. d. 4. p. ult. §. 3. n. 44. Conc. p. 352. n. 23. et Escob. n. 745. cum Suar. Laymann, Perez, et Gutt.; item Diana, ac Leand. ap. Salm. ibid. n. 53., tum quia sic habet praxis Curiæ, tum quia unum impedimentum cum altero conjunctum difficilius dispensatur. Tertia sententia probabilior, quam tenent Salm. ibid. n. 54., cui non dissentiunt AA. secundæ, distinguit, et dicit quod si impedimenta disparate se habent, et unum ex altero non augetur, ut votum et consanguinitas, aut consanguinitas et machinatio, tunc sufficit divisim obtinere dispensationem; secus si impedimenta sint talis rationis, ut afferant conjuncta majorem repugnantiam ad matrimonium contrahendum, puta si quis vult ducere consanguineam, cujus sororem turpiter cognoverit; tunc enim difficilior redditur dispensatio. Excipiunt Coninck, et Aversa apud Salm. l. c. in fin. si justa detur causa separandi, ut si unum impedimentum esset publicum, et aliud secretum, quod infamiam possit afferre, nempe si quis vult ducere consanguineam, cujus sororem occulte cognovit; tunc enim, ne infamentur contrahentes, bene possunt divisim dispensationem petere. Et talem testatur Aversa esse stylum Curiæ. Sed id dico intelligendum tantum respectu ad dispensationem obtinendam à Dataria, puta ob publicum impedimentum consanguinitatis cum sponsa; nam quoad dispensationem impedimenti occulti propter copulam cum ejus sorore, juxta nostram sententiam, saltem in supplicatione ad Pænitentiariam debent ea impedimenta simul exponi, cum simul exposita jam, ut diximus, dispensationem reddant difficiliorem. 4440. — Quær. 8. An si quis post obtentam dispensationem super impedimentum occultum affinitatis, iterum habuerit rem cum eadem.

Q. 352. N. 43. Anacl. p. 704. N. 465. Salm. ibid. N. 54. With Aversa, and Pal. and Escob. N. 748. With Mol. Hurt. Con. Villal. Diana, Leand., and the Roman Rota. The reason is that what is mixed is not contained in the simple; and although these impediments are not of a different species, they are nevertheless distinct in number. And on this point, there is no longer any doubt; for it has been declared by Benedict XIV. in the Brief, "Etsi matrimonialis," already mentioned above, n. 4436. And the same is to be said of other impediments of consanguinity, spiritual affinity, public decency, etc., as stated by Sanch. and Anacl. in the cited books and chapters, 4439. — Question 7. If several impediments are present, can their dispensation be obtained separately? There is a threefold opinion. The first opinion affirms this, and it is held by Salas, Rodr., and Sa. in Salm. de matr. c. 14. p. 4. n. 52., and they call it probable, citing Villal. Dicast. and others, because nowhere is it required by law that the impediments be presented together. The second opinion denies this, and it is held by Sanch. l. 8. d. 23. n. 2. Pont. l. 8. c. 47. §. 4. Pal. d. 4. p. ult. §. 3. n. 44. Conc. p. 352. n. 23. and Escob. n. 745. with Suar. Laymann, Perez, and Gutt.; also Diana and Leand. in Salm. ibid. n. 53., both because of the practice of the Curia, and because it is more difficult to obtain a dispensation for one impediment when it is joined with another. The third opinion is more probable, and it is held

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by Salm. ibid. n. 54., to which the second opinion does not dissent, and it distinguishes, saying that if the impediments are distinct from each other, and one does not increase the other, such as a vow and consanguinity, or consanguinity and collusion, then it suffices to obtain a dispensation separately; otherwise, if the impediments are of such a nature that they, when joined together, present a greater impediment to the marriage, for example, if someone wants to marry a relative whose sister he has unlawfully known; then the dispensation becomes more difficult. Coninck and Aversa, in Salm. l. c. at the end, make an exception if there is a just reason for separation, such as if one impediment were public and the other secret, which could bring infamy, namely, if someone wants to marry a relative whose sister he has secretly known; then, in order that the contracting parties may not be dishonored, it is well to request a dispensation separately. And Aversa testifies that this is the style of the Curia. But I say that this must be understood only with respect to obtaining a dispensation from the Dataria, for example, for a public impediment of consanguinity with the bride; but with respect to the dispensation of the hidden impediment because of a union with her sister, according to our opinion, at least in the petition to the Penitentiary, those impediments should be presented together, because, as we have said, when they are presented together, it makes the dispensation more difficult. 4440. — Question 8. If someone, after obtaining a dispensation regarding a hidden impediment of affinity, has further dealings with the same.

[*Latin ed. p. 249*]

Whether a blood relative of the bride, before she is taken in marriage, requires a new dispensation? If the dispensation has not yet been executed by the one to whom it was entrusted, all are considered to not require it; thus, *Cont. Tourn. de dispens.*, part 4, chapter 47, article 4, paragraph 5. But if, as *Elbel de matr.*, page 505, number 506, states, because such dispensations do not take effect from the date of their issuance, but from the time of their execution. However, if it has already been executed, *Habert de legib.*, chapter 13, and *Elbel*, *loc. cit.*, citing *Gob.* and *Quintanad.*, affirm that the executor can only dispense with an impediment to marriage that has already been contracted, but not with the contracting of the marriage itself, especially since the letters of the Holy Penitentiary often grant the faculty with the clause, "for this occasion." It is more probable that a new dispensation is not required, as *Sanch.*, book 8, title 25, number 4, states, citing *Guttier. Cord.* and *Manuel*, and *Cont. Tourn.*, *loc. cit.*, citing *Anacl.* and *Corrado*, who offer an explicit declaration on this matter from the Holy See. The reason is that the affinity has already been removed by the dispensation with regard to this effect of contracting marriage; and this seems to be indicated by the clause "for this occasion," if, indeed, it is true that such a clause is often added, which I do not know. Furthermore, the Holy Penitentiary itself follows this our

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opinion in practice, as I myself observed in a certain authentic Rescript of its own, published on September 24, 4752, where the response was as follows: "The Holy Penitentiary, in response to the above, states that if the petitioner has already been dispensed from a certain impediment to marriage with another person of the same degree of first affinity with the present spouse of the woman, even if he, after obtaining this grace and before the celebration of the marriage, should again fall into a relationship with the aforementioned woman's mother, he does not require a new dispensation. And this applies even to a dispensation obtained from the Dataria, and executed with regard to the impediment of consanguinity; provided that the dispensation was not granted in the form for the poor; thus, *Corrad.*, book 8, chapter 4, number 54, and *Sanch.*, *de matr.*, book 8, title 24, number 8, with others. Benedict XIV, in *Notif.* 87, number 54, citing *Fill. Clericat.* and *Tamb.*, states that if, after obtaining a dispensation from the Holy Penitentiary in foro conscientiae, the impediment is considered to exist in foro externo, and the spouses are unable to provide any proof that the marriage has been contracted, then the Bishop, the parish priest, and the judge must acquiesce in the testimony of the confessor attesting to the dispensation obtained. 1444. — Question 9. Whether, after obtaining a dispensation regarding a prohibited degree, before it is entrusted to execution, a union has taken place between the betrothed, is a new dispensation required? Some deny this, as *Ovan. Sa.*, etc., state, cited in *Sanch.*, book 8, title 25, number 6. But it is more likely that *Sanch.*, citing *Callegio*, *Guttier.*, etc., number 8, affirms this. The reason is that the practice of the Curia is such that incest is declared in this case; for when this is manifested, the Pontiff imposes a greater penance, and demands a more extensive composition of money. And so, the Holy See declared in May 4635 (cited in *Pitton.*, number 878), stating: "Whoever has obtained a dispensation by letters regarding a prohibited degree, to..."

[*Latin ed. p. 250*]

Concerning impediments, if one of the parties has not been presented to the other, or if they have contracted marriage carnally (note), they cannot remain in the marriage without a new dispensation. This is also derived from the statements in question 3, number 4136. However, Sanchez, in the aforementioned work, number 5, states that even if a dispensation has been granted with a condition, provided that there is no fault, nevertheless, if that condition is considered after the dispensation has been executed, a new dispensation is not required, because it is sufficient that the marriage did not take place before the dispensation, as stated in number 1442. Question 40: Whether, if the parties are from different dioceses, each must obtain a dispensation from their own bishop? Sambovius, Gisbert, and others, as cited in *Controversae Tournenses*, volume 4, chapter 17, article 3, section 2, affirm this. However, *Controversae Tournenses* itself, in the

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same place, argues against it, even with the bishop of Tulle. The reason is that when a bishop removes an impediment from his subject, he makes him capable of contracting marriage with another who is impeded, just as if someone had the power to grant dispensations in a certain matter, by granting a dispensation to his subject, he would also grant a dispensation to an outsider; therefore, this outsider could rightfully contract marriage before the parish priest of the other diocese with whom the bishop has granted a dispensation. Question 44: What are the usual clauses added to dispensations granted by the Sacred Penitentiary? Clause I: "If it is so." In this, Sanchez, in book 3, chapter 34, number 21, and Cabassol, in *Tractatus de Matrimonio*, book 3, chapter 27, number 40, correctly state that faith must be given to the penitent, unless the delegate certainly knows the contrary from information received outside of confession. However, Sanchez, in book 3, chapter 20, number 48, with Navarrus, states that if a dispensation is requested regarding a vow of chastity, it is not sufficient for granting the dispensation merely the temptation, or the danger of falling only once or twice, but it is required that the person making the vow is in danger of frequently violating the vow. However, Controverse Tournenses, in the aforementioned chapter, article 11, section 2, with Pontas, believes that it is sufficient if someone, due to a serious temptation, is in a probable danger of even one transgression, because chastity is lost with even one transgression. II. After a sacramental confession has been heard. Therefore, according to this clause, confession is necessary; and Sanchez, in book 8, chapter 24, number 29, does not truly contradict this, as Controverse Tournenses believes in the aforementioned place. The second clause: At the time that Sanchez wrote this, this clause was not added, and therefore he said that confession was not required; but Sanchez himself adds there that confession would be necessary if such a clause were added. III. The occasion of sin has been removed. This means that if the occasion is voluntary, it must be removed in fact; but if it is necessary, it must at least be removed from the mind, by making it remote through the use of appropriate means, as Controverse Tournenses correctly explains in the aforementioned place. Third clause: IV. Provided that the impediment is hidden. See the statements in number 4441 regarding this clause. V. A severe penance has been imposed. This is understood according to the strength of the penitent, as Controverse Tournenses correctly notes in the same place. The fourth clause, with Tiburtius and Navarrus, states that, for example, a fast of six months could be imposed.

[*Latin ed. p. 251*]

Once a week, or the recitation of the Rosary three times a week, or frequent confession (at least once a month), prayers, spiritual reading, etc. If, however, the penitent, on account of the sin for which dispensation is requested, has already satisfied the prescribed penance, as Cont. Tourn.

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states in the same place, due regard must be had to that previous satisfaction, and therefore the confessor must moderate the penances prescribed in the Roman Breviary. If, however, a certain form of commutation is attached to the dispensation granted, namely, confession once a month, this must be imposed by the confessor, as Cont. Tourn. states in the same place, n. 2, and Benedict XIV, Notif. 87, n. 46, with Sayro, VI. The aforementioned penance must be performed immediately; but understand this morally, namely, at least within three days after the dispensation is granted, according to what was stated in n. 856. If, however, the clause regarding the penance is not included in the written document, as is not the case when the marriage has not yet been contracted, then there is no obligation to impose it, but such a dispensation must be carefully noted by the parish priest in a book that cannot be seen by others, so that he himself may later, if necessary, attest to the dispensation obtained. 1444. — Question 42. Regarding which impediments does the Holy Penitentiary have the power to grant dispensations? In order to answer this question, which can be very helpful for the practice of parish priests and confessors, I have considered it worthwhile to note what is contained in the bull of the Supreme Pontiff Benedict XIV, which begins with "Pastor bonus," issued on April 13, 1744, where the bull of Innocent XII (issued on April 3, 1732, beginning with "Romanus Pontifex") is confirmed and included. There, § 39, regarding marriages not yet contracted, it states: "In marriages to be contracted, the Major Penitentiary may, in foro conscientiae only, grant dispensations, or order them to be granted, regarding hidden impediments that do not invalidate the marriage." These impediments, as we have said above, are limited to three: a vow, betrothal, and an ecclesiastical prohibition. Regarding impediments that do invalidate the marriage, it is stated there: "But regarding dispensations... concerning any impediment, whether of consanguinity, or of affinity arising from a lawful marriage, or from spiritual relationship, even in foro conscientiae only, even if the impediment is hidden, and there is a risk of scandal, in these marriages to be contracted, he must abstain." Regarding impediments in marriages already contracted, § 40 states: "In marriages already contracted, both parties must abstain from dispensations, or from the renewal of the marriage, in the first and second degrees of consanguinity, or of affinity arising from a lawful marriage, even if hidden, except if the impediment in the aforementioned second degree has lasted for at least ten years, and the parties have publicly professed and proven their intention to marry."

[*Latin ed. p. 252*]

Judges are considered legitimate. In the third and fourth grades, dispensations can be granted in secret matters, and even in the same third and fourth public grades, marriages can be validated, due to the hidden deception and concealment of Apostolic Letters, unless the falsehood lies in the narration of a previous union, which had not previously taken place.

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And the reason for this is that in the validation of a marriage, no infamy accrues to the contracting parties because of a falsely alleged union.

Furthermore, concerning affinity arising from an illicit union, § 43 states: "Concerning the hidden impediment of affinity arising from an illicit union..., whenever a reasonable cause is present, it is permissible, even if the danger of scandal does not loom, to grant and mandate a dispensation in both marriages that have been contracted and those that are about to be contracted, in the forum of conscience..."

Concerning the impediment of a crime, § 44 states: "Concerning the hidden impediment of the crime of adultery, if it was committed with faith, without the machinations of either party, a dispensation can be granted in both marriages that are about to be contracted and those that have been contracted. If, however, the crime... was committed with the machinations of both or either party, a dispensation can also be granted in secret matters; but rarely, and only when necessity demands, due to some grave and imminent danger, which will be judged by the prudence of the Major Penitentiary, especially after the matter has been discussed in congregation, or by the Signature."

Finally, in § 57, the Holy Pontiff confirms all the privileges and indulgences granted to the Holy Penitentiary by other Pontiffs, even through the oracle of the living voice. And Benedict, in Notification 87, n. 7, reports that Innocent XII declared that all faculties pertaining to the Holy Penitentiary were granted to it through the oracle of the living voice, except for those that were excluded in his bull, *Romanus*.

Furthermore, it should be noted that, in order to obtain a dispensation, the consent of the person who is to benefit from it is not required, although it must subsequently be accepted by that person, as Sanchez, book 8, title 3, n. 4, and Salm, on marriage, chapter 44, page 3, n. 38, add. They add that if the same impediment affects both parties, it is sufficient to obtain a dispensation for one; otherwise, if the impediment affects one independently of the impediment of the other.

It should be noted that when a dispensation is requested from the Dataria, only the name, surname, diocese of origin, and domicile are required, if the petitioner has a perfect domicile there; also, the diocese of both the bridegroom and the bride, if they belong to different dioceses. When a dispensation is requested from the Holy Penitentiary, the names and other details are omitted, but only the person and the place to which the letters are to be addressed are indicated.

Here, reference is made to the practice of the confessor noting the formula of the petition for obtaining a dispensation from the Holy Peniten-

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tiary for an impediment to contracting, or for validating, a marriage.

[*Latin ed. p. 253*]

To the Most Eminent and Reverend Lord, NN., having not had carnal knowledge of a woman, finds himself having given his word of marriage to NN., his sister; and because the impediment is hidden, and if the said marriage does not take place, a great scandal would result, he therefore humbly supplicates the Most Eminent Lord to grant him a dispensation. The reply will be graciously sent to Naples (or to Nola, via the postal service of Naples to Nola), addressed to... (here, the name and surname of the person to whom it is to be written should be expressed). If, however, a dispensation from the vow of chastity is requested: NN., having been bound by a vow of chastity, but because he is in grave danger of incontinence, he humbly prays the Most Eminent Lord to grant him a dispensation from the aforementioned vow, so that he may be able to contract marriage, etc. Thus, if the marriage has not yet been contracted, it can be written thus; if, however, the marriage has already been contracted, it can be written thus: NN., unaware (or aware) of the impediment, has contracted marriage with a woman, whose mother (or sister) had previously had carnal knowledge of him; therefore, since the impediment is hidden, and separation cannot be achieved without scandal, he humbly supplicates the Most Eminent Lord for absolution and dispensation. The reply, etc. (4) Furthermore, the following should be written: To the Most Eminent and Reverend Lord, and Most Worthy Patron, the Lord Cardinal Penitentiary Major, in Rome.

(1) That is: Intus: Eminentissimo et Reverendissimo Domino! NN. cum carnaliter cognovisset quamdam mulierem, dedit fidem de matrimonio contrahendo NN. sorori ejus. Et quoniam impedimentum est occultum et matrimonium si cum prafata sorore non contraheretur, magnum eveniret scandalum, quapropter suppliciter orat Em. V. ut ei dispensationem benignè indulgeat. Responsum dignetur mittere Neapolim (aut Nolam per publicum cursorem Neapolitanum) ad Rev... (hic exprimatur nomen et cognomen illius ad quem rescribendum erit.) Si autem petitur dispensatio voti castitatis: NN. cum castitatis voto sit obatrictus et in gravi versetur periculo incontinentiæ, suppliciter orat Em. V. ut dignetur oratori à prafato voto dispensationem indulgere qua matrimonium contrahere possit, etc. Ita si matrimonium nondum est contractum; si verò matrimonium jam est contractum, sic scribi potest: NN. ignarus (aut consecus) impedimenti contraxit cum muliere, cujus matrem (aut sororem) jam antea carnaliter cognoverat; sed cum impedimentum sit occultum ac separatio sine scandalo fleri nequeat, supplicat Em. V. pro absolutione et dispensatione. Responsum etc. Forls autem inscribetur: Eminentissimo ac Reverendissimo Domino, Domino colendissimo, Domino Cardinali Penitentiario majori,

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[*Latin ed. p. 254*]

Having been granted authority in this matter, I dispense you from the impediment of the first (or second, or first and second) degree of consanguinity, arising from the illicit union you had with the sister of the woman with whom you contracted (or intend to contract marriage, in order that you may contract marriage with her again, with renewed consent), and I declare the offspring, if any you have conceived (or will conceive), to be legitimate. In the name of the Father, etc.

If the dispensation is from a vow of chastity, it is said: "Furthermore, I exchange the vow of chastity which you have made, so that you may be able to contract marriage and use it, for the work which I prescribe to you, by granting this dispensation." In the name, etc.

If someone, despite having made a vow of chastity, has already entered into marriage, it is said: "Furthermore, despite the vow of chastity which you have made, you may remain in the marriage, and may demand the marital debt, by the authority of the Apostolic See, dispensing with you in this matter." In the name, etc.

He who wishes to read the bull of Benedict XIV, in which the procedure is prescribed for all cases of nullity of marriage, should see P. Zachary, *ad Croica*, book 6, page 3, number 430, who refers to it at length. The aforementioned bull begins: "By the mercy of God, and it was issued on the third of November, in the year 1741." (See the Bullarium of Benedict XIV. See also La Croica, book 6, page 3, number 909.)

[*Latin ed. p. 255*]

BOOK SEVENTH. OF ECCLESIASTICAL CENSURES, AND IRREGULARITIES. CHAPTER I. OF CENSURES IN GENERAL.

QUESTION I. What is an ecclesiastical censure?

1. What is a censure?

2. Does a censure deprive one of internal goods?

3. Is degradation, or deposition, a censure?

4. Is cessation from divine services a censure?

5. Is an irregularity a censure?

1. — "RESPONSE: It is a spiritual and medicinal penalty, by which, through the power of the Church, the use of certain spiritual goods is taken away from a baptized person who has committed a fault and is contumacious." (Laymann, Book 1, Volume 5, page 1, chapter 1.) (Note the word "medicinal." And therefore, those concerning whose correction there is no hope should not be excommunicated, unless it is done to terrify others. Salm, Tractate 10, on censures, chapter 1, page 1, paragraph 10, with St. Thomas.) Therefore:

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2. — "1. By a censure, a person is not deprived of purely internal goods, e.g., the character, the power of the order, nor of proper and private goods, e.g., faith, charity, grace, etc." (Nor of the Holy Communion, which derives fundamentally from faith and charity. See Salm, on censures, chapter 1, page 1, paragraph 8.) "But rather of certain external and public things, or actions, which have some spiritual effect or benefit, such as the sacrifice, the divine office, a benefice, administration, and the reception of the sacraments, indulgences, and public ecclesiastical suffrage; because these, and not those, are subject to the disposition of the Church. Therefore, if sometimes a person is deprived of some temporal good, e.g., by human law through excommunication, it is done secondarily."

2. Exile, imprisonment, servitude, deprivation of a benefice, unless added to.

[*Latin ed. p. 256*]

1. A certain suspension of spiritual actions is not a censure, because it is a temporal penalty.

2. "Neither degradation, nor deposition, is a censure; because, although it may be a spiritual penalty, it is not medicinal, but perpetual, and can be imposed for a past sin, even after it has been amended." (This is more accurately and commonly stated by Salm. ibid. p. 2, n. 12, with Suarez, Barbatus, Palafox, Cotelier, Valois, etc. [contrary to Gutierre, Ledesma, etc.], and is clearly deduced from the chapter "Quaerenti," concerning the meaning of words, where it is stated: "When someone asks what should be understood by the term 'ecclesiastical censure' when we include such a clause in our documents? We reply that by it, not only an interdict, but also a sentence of suspension and excommunication, should be understood.")

3. "Neither cessation from the Divine Sacraments, because it is not imposed as a medicine to remove obstinacy, but to repel the injury done to the Church."

4. "Neither irregularity, whether it arises from a defect, because this is not a penal matter, but only a canonical impediment; nor from a fault, because this is not imposed as a medicinal penalty, but as a punitive one, and is, in itself, perpetual. Therefore, it is not removed by absolution, as is a censure, but by dispensation." (Bonacichius teaches this in d. 4, p. 4. Suarez teaches it in t. 5, d. 4, sect. 3. Bonaventure teaches it in d. 4, q. 4, p. 4, n. 4. Contio Tournheimensis, tr. de censuris, part. 4, cap. 4. Salm. de cens. c. 4, p. 2, n. 12 and 15, near the end. Palafox, d. 4, p. 4, n. 3, etc. [contrary to Soto, Banuet, Covarrubias, etc.]. And this opinion is also favored by Benedict XIV in the Encyclical Letter "Inter præteritos," published on December 3, 1749, § 50. See the aforementioned statements, n. 351.)

5. "When, in jubilees or privileges, the power to absolve from censures is granted, irregularity is not included, unless it is expressly added," (as

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declared by the same Benedict XIV, in the aforementioned work).

DOUBT II. How many kinds of censures are there?

6. How are censures divided? Are censures pronounced by the Bishop in a synod perpetual, and as if pronounced by law?

7. When are censures considered to be pronounced by law?

8. When are they to be imposed?

RESPONSE. Censures are divided:

I. Essentially, into excommunication, suspension, and interdict.

II. Accidentally, into those that are pronounced by law and are imposed according to the canons, constitutions, or ecclesiastical statutes, by a stable and permanent law; and those that are pronounced by a human authority, that is, those imposed by a judge or prelate, by way of a mandate or a judicial sentence, concerning a particular fact.

[*Latin ed. p. 257*]

"Either concerning particular persons; or general, which is not directed to any particular act or person. (Note that the censures imposed by the Bishop in a diocesan synod are said to be promulgated by way of statute; and these, as if promulgated by law, endure after the death of the Bishop. Others, on the contrary, are promulgated outside the synod by a human authority, by way of precept, or mandate, or judgment; and these cease with the death of the one who imposed them, whether the precept is particular or general. Thus, Ronc. c. 4, q. 2; Salm. 1, c., n. 46; Croiae l. 7, n. 7, with Dicast.)

III. Concerning the sentence that is already pronounced, which is, indeed, what the law or judge establishes by the very fact that someone, for example, acts against the law, without any further judgment: and concerning the sentence that is to be imposed, which the law, or the judge, does not want to impose by the very fact, but by a judgment. To distinguish between these, the words by which the censure is imposed must be considered; if they include the action or ministry of another, they signify that the censure is a sentence to be imposed; on the other hand, if they do not include such, then it is a sentence already pronounced. If, however, the words are ambiguous, the rule in 6 of the 49th section of the law can be applied, which states that in cases of doubt, the more benign interpretation should be followed." (Thus also Sporer, p. 446, n. 6; Contin. Tourn. de cens. part. 4, cap. 4, v. 3; Conc. t. 40, p. 445, n. 5; also Fill. March., etc., with Salm. de cens. o. 4, p. 2, n. 48, and the same o. Odia, and the same e. In pænis, de reg. juris in 6.)

Therefore, we resolve: 7. - "4. A censure is a sentence already pronounced: 1. If the words are in the past or present tense, e.g., 'we excommunicated,' 'he is excommunicated,' 'he was,' 'I excommunicate,' 'they are suspended,' 'they are interdicted,' 'we will,' or 'you are commanded to

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be excommunicated, suspended, etc.' 2. If the words include 'by law,' 'by the very fact,' or 'without any further judgment.' 3. If the words are in the imperative mood, e.g., 'let him incur excommunication,' 'let him remain interdicted,' etc. The reason is that all of these do not include the action of anyone."

8. - "2. A sentence to be imposed is, at least in most cases, 4. If the words are in the future tense, e.g., 'he will be excommunicated,' 'he will be suspended.' (Thus, Contin. Tourn. l.c., and Conc. p. 445, n. 5.) 2. If it is said, 'he will be excommunicated,' 'he will be suspended,' 'we will excommunicate.' (Thus, Sporer, p. 446, n. 6, but see here at the end.) If the words are threatening, e.g., 'under pain of excommunication,' 'under the threat of anathema,' etc., unless something else is inferred from the context." (Thus also Salm. ibid. n. 48 and 49, with Fill. Avila, etc.; Conc. p. 445, n. 5, and Contin. Tourn. ibid. Also, if it is said: 'We will excommunicate,' 'we will suspend,' Ronc. p. 50, q. 2. If, however, it is said: 'Let him be excommunicated,' Bonac. Hurt., etc., with Salm. de cens. c. 4, p. 2, n. 49, they hold that excommunication is a sentence already pronounced, but Sanch. Laym. ibid., etc., hold that it is to be imposed. Both are probable. If it is said: 'Let anathema be,' Sanch. and Dic. ap. Croiae l. Tom. V."

[*Latin ed. p. 258*]

7. n. 9. They say that censure is permissible (against Suar. and Cont. Tourn. where above), unless it is enacted against heresy. But what Bus. says, that if it is said: "Let him be excommunicated, let him be suspended, etc.," that a sentence of censure is understood, this must be explained if the precept of excommunication, suspension, etc., is imposed upon another (e.g., a Bishop). But if it is presented absolutely in an imperative manner, then a sentence of censure is to be declared, as Bon affirms and teaches in d. 4. q. 4. p. 4. n. 7, and as is commonly taught by Sylv., Angl., Arm., Suar., Vasq., Avila, and Dic. ap. Croiae, lib. 7. n. 9.)

DOUBT III. Who can incur censure, and in whom?

9. Who can incur censure?

10. By ordinary authority, the following can:

I. The Pope.

II. Bishops.

Whether also vicars of the Church?

III. Regular prelates.

IV. Councils, and chapters.

V. Those who have this power by privilege.

11. Who can incur censures by delegated authority?

Not:

1. Parish priests.

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2. Laymen.

3. Women.

12. How many conditions are required for someone to incur censure?

I. That he be a man.

II. That he be baptized.

III. That he be tonsured.

IV. That he be of sound mind.

V. That he have proper jurisdiction.

VI. That he act freely.

13. What conditions are required for someone to be bound by censure?

I. That he be a human being.

II. That he be baptized.

III. That he be of sound mind.

Whether also the mentally ill, or those temporarily incapacitated?

14. Are the immature capable of incurring censure?

15. IV. That he be subject to authority.

16. Are kings subject?

17. Are foreigners subject?

18. V. That he be a specific person, subject to excommunication.

19. Is excommunication valid and licit in a community?

20. Regular prelates can incur censures on those subject to them, wherever they may be.

21. Q. I. Can a Bishop existing outside his diocese incur censures on those subject to him?

22. Q. II. Can, on the contrary, a Bishop existing within his diocese bind a subject who resides outside the diocese with censure?

23. Q. III. Does a subject who commits an offense outside the diocese incur a censure declared by a precept for those who will commit offenses in the future?

24. Are monasteries of Regular canons places subject to censure?

25. What if the matter concerns compensating for damages?

26. Q. IV. Can a Bishop incur censures on a subject of another diocese who commits an offense within his diocese?

27. Q. V. Does a general censure bind foreigners?

28. In what way can someone be bound by multiple censures?

9. — ANSWER: 4. Every person can incur censure, and only the superior ecclesiastical authority, who has in the external or contentious forum, either ordinary or delegated, jurisdiction. (It is a matter of faith, against the innovators, that the Church has the power to impose censures, by which she deprives her subjects of spiritual goods, according to the Council of

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Constance, session 8, and according to the bulls of Martin V. and Leo X.)

[*Latin ed. p. 259*]

40. — "Either the ordinary power, which is by reason of office, or another power, by a grant of jurisdiction, can be delegated to a cleric who enjoys the privileges of the clergy, as stated in 'Bonifacius, Dist. 1, c. 4, p. 2; Laymannus, l. 4, t. 5, p. 4, c. 3, n. 4, citing from 'Ecclesiasticorum, S. Th., etc.'." The Pope, as taught by ecclesiastical authorities, has jurisdiction over the entire Church. Secondly, Patriarchs and Archbishops have jurisdiction only over their own dioceses, and not over suffragan dioceses, unless during a visitation, or unless the matter has been appealed to them; as stated in 'Palafoxius, Dist. 4, c. 4, n. 2; Concilii Tridentini, Sess. 22, Decret. c. 4, n. 34; and Salmeron, De Censuris, c. 4, p. 4, n. 29, citing from 'Venerabilibus, De Sententiis Excommunicationum, c. 6.'" Thirdly, Bishops, provided they have been confirmed, although not consecrated, possess jurisdiction, because through confirmation they already acquire jurisdiction; as stated in 'Contraro, Tourn. De Censuris, part. 4, cap. 2, art. 2, v.' I and Salmeron, l.c., n. 29, citing from 'Transmissam De Electis'). Fourthly, their vicars general possess this power; however, Sayr, Ugolin, and others deny this (see Croix, l. 7, n. 24), but it is more accurately affirmed by Bus, Fagnan, in 'Quoniam, De Officio Delegato, n. 45; Bonifacius, q. 4, p. 2, n. 5; Contraro, Tourn., l.c.; and also Suariz, Sanchia, Guttieri, Gare, and others, see Croix, l.c.' Because this pertains to the ordinary power of the vicar, who forms a tribunal with the Bishop, as stated in 'Romana, De Appellationibus, c. 6, and c. 2, De Consuetudinibus, c. 6.') Fifthly, Generals, Provincials, and superiors of religious orders, such as priors, guardians, and rectors (see Suariz, d. 2, sect. 2, n. 9; Bonacius, q. 4, p. 2, n. 5; Palafoxius, p. 4, n. 2; and Salmeron, ibid., n. 34, citing from 'Cum In Ecclesiis, De Majoribus et Obedientia').' Sixthly, Congregations of religious orders, provincial councils of bishops, and certain provincial chapters of religious orders, and finally, the chapter of the cathedral church when the see is vacant, or the capitular vicar acting in its place (Salmeron, ibid., n. 32, citing from 'Cum Olim, De Majoribus, etc.' And finally, fifthly, certain others by concession, such as many archdeacons, archpriests, and deans (Add that all those who, by common error, are considered to be superiors, even though they possess a title, can impose censures, as stated in 'Barbarius, ff. De Officiis Praetorum, and in 'Infamis, 3, q. 7'. See Salmeron, ibid., n. 38.)

41. — "Those to whom power is delegated possess it from the one who granted it, and it expires with the death of the grantor, unless the cause for which it was delegated has already been initiated by the delegate, even by a simple citation, as stated in 'Gradum, De Officio Delegato.'" Furthermore, the delegate cannot delegate to another, unless he has a special commission for this purpose, as if he were a delegate of the Pope (from 'c. 3, De Officio Delegato, propter privilegium quod habent delegati à Pontifice'). There-

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fore, it follows that: 4. Parish priests cannot impose censures by ordinary power (as commonly stated by Contraro, Tourn., l.c., with D. Thomas, D. Bonaventure, etc., and Salmeron, De Censuris, c. 4, p. 4, n. 33, with Suariz, Soto, etc.)."

[*Latin ed. p. 260*]

• 2. Laymen: because they are not capable of ecclesiastical jurisdiction; just as professed religious who do not have the tonsure.

3. Women, even if they are prioresses or abbesses, because they are not capable of jurisdiction, or the power of the keys; however, when they are said in law to be able to suspend clerics subject to them from office or benefice, the suspension is not properly considered a censure, the violation of which incurs irregularity, but rather, secretly and improperly, as a precept, by which the abbess prohibits a cleric subject to her from celebrating, until he has made amends, thereby depriving him of income in the meantime. See Bon. l. o.; Laym. l. c. t. 5, p. 4, c. 3, n. 3, 42.

It must be diligently noted that, in order for someone to impose censures, five conditions are required.

First, it is required that he be a man, at least when speaking of ordinary power. Whether the Pope, by the fullness of his power, can grant a woman the faculty of imposing censures? It is more probable that this is denied (Salm. ibid. p. 5, n. 48), with St. Thomas (Contra Croiœ l. 7, n. 49), and Palud. Leand. etc. The reason is that this power was given to the Apostles, and to their successors, to whom the keys of the Church were entrusted; but this power of the keys cannot in any way be entrusted to women.

Second, it is required that he be baptized, because he who is not in the Church is not capable of ecclesiastical jurisdiction; thus, more truly (Suar. Candid. and Salm. ibid. n. 51), against Ugolin. etc.

Third, it is required that he be at least marked with the first tonsure, otherwise he cannot have spiritual jurisdiction, since he is not yet constituted in the ecclesiastical order. Thus (Salm. ibid. n. 52 and 53), with St. Thomas (eo c. Quæ in Ecclesiarum, de const. where laymen are forbidden to treat of spiritual matters). And therefore, a layman cannot be chosen as a vicar by the Bishop (Salm. de cens. c. 4, p. 5, n. 52, in fin.), with Covarr. However, the Doctors commonly say that, by a commission from the Pope, a layman could impose censures; for that someone imposing censures must be an ecclesiastic is a matter of positive law, in which the Pope can grant a dispensation (Palud. p. 4, n. 3, Cont. Tourn. loc. cit.; Bon. p. 2, num. 3 and 6; Salm. cit. num. 52, circa med. with Coh. and Cand. œ Croiœ d. num. 49, with comm.).

Fourth, it is required that he be of sound mind; this is common. See (Salm. ibid. n. 55). Indeed, he must have the intention of binding the person against whom he imposes the censure, from c. Cum voluntate, de sent. eœc.

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From this it follows that:

1. If a Prelate intends to exempt someone from the general sentence, that person does not incur the censure.

2. If a Prelate imposes a censure without the intention of binding, the censure is not incurred.

3. If someone is excommunicated at the instance of a party, that person is bound only according to the intention of that party; thus (Salm. dict. n. 55, in fin.).

Fifth, it is required that he have jurisdiction extended to him in regard to its use; hence, a Bishop who is excommunicated, suspended, a heretic, or a schismatic.

[*Latin ed. p. 261*]

He cannot bear censures, according to canon [Exceptionem, de except.]. And therefore, a vicarious of a Bishop who is excommunicated, or suspended, cannot bear censures, according to canon 4 of *De Officio Vicarii*, in section 6. However, a heretic who is hidden, or who is validly, although illicitly, excommunicated, does bear censures, as is commonly held by Suar. d. 14, s. 4, n. 8; Sot. in 4th dist., 22nd question, article 4; Dian. p. 5, tr. 9, r. 50, and Salm. ibid., n. 58, with Sayr, Cornejo, and Leand. The reason is that, for the sake of the common good, unless he is to be avoided, the Church retains jurisdiction over him, as Sayr states in *De Evitand.* Indeed, Corn. Sayr, Bon., Dian., Avil., etc., apud Salm. ibid., hold that even a publicly excommunicated person validly bears censures, if he has not been specifically denounced, or is not a public assailant of the clergy, according to *Extravagantes Martialis*, V, *Ad Evitanda*, where it is stated that an excommunication tolerated in matters pertaining to the public office is not to be avoided, nor even by those who are aware of it. Requirement VI: In order that one who inflicts a censure may act freely, and not under compulsion, according to canon *Cum Voluntate, de sententiis excommunicationis*. But is a severe censure imposed out of grave fear valid? Corn. Sayr and Ugol. deny this, according to Salm. de cens., c. 4, p. 5, n. 59; but Suar. d. 2, s. 5, n. 6; Bon. q. 4, p. 42, n. 4; Pal. d. 44, p. 5, n. 2; *Controversiae Tourn.* de censur., part 4, cap. 3, art. 4, and Salm. ibid., n. 60, with Con. and Vill., affirm it. The reason is that an act performed out of grave fear is valid, unless it is contradicted by a special positive law. However, it is certain that an absolution obtained through fear is invalid, according to canon *Verbum, de pænitentia*. See Salm., cited, n. 59 and 60. This is only if the fear is unjustly imposed; otherwise, if it is justly imposed, as Ronc. states in *De Censuris*, c. 6, q. 6, 43, — Resp. 2. A censure can be imposed on all and only those who are subject to a particular ecclesiastical superior, because subjection and jurisdiction are correlative. Laym. l. c., c. 3. Therefore, it follows: 4. The unbaptized do not incur censures, even if they are catechumens; nor do the dead, because they are not subject to the

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jurisdiction of the Church. It does not matter that sometimes the dead are said to be excommunicated: for they are not newly bound, but rather a prior excommunication is merely declared, and the living are prohibited from acting with them, from praying for them, from burying them, etc. Similarly, it is said that they are absolved from excommunication when burial and public prayers for them are permitted. Laym., loc. cit. Therefore, in order that someone may be bound by a censure, five things are required: I. That he be a human being; for animals are improperly said to be anathematized. II. That he be baptized. III. That he be of sound mind; for children, and those who are perpetually insane, are, as they are incapable of guilt, also incapable of censure. But can they be subject to a local interdict, so that they are excluded from divine offices? Suar. d. 36, sect. 2, n. 7, and *Controversiae Tourn.* de censur., part 2, cap. 3, deny this.

[*Latin ed. p. 262*]

Art. 4. Note 3, and Salm, ibid., p. 43, n. 467, with Suarez, Avila, and Cornaro (against Sayr and Cand.), because they are incapable of punishment. Those, however, who are temporarily lacking reason, such as those who are temporarily insane, drunk, or asleep, are bound by censures if, at the time they were in their right mind, they committed an offense. Salm, ibid., with Suarez, Pal, Con., etc., 14. — But can the impuberes (those who have not reached the age of puberty) be subject to censures? Answer: If the censure is imposed as a command, all Doctors affirm; but if it is imposed as a sentence, Sayr, Vill, etc., deny, because the impuberes can scarcely defend themselves in court. However, Pal, d. 4, p. 6, n. 2, Suarez, d. 5, sect. 4, n. 49, Croiae, n. 42, Bon., p. 4, n. 9, Conl. Tourn. de censur., part. 4, cap. 3, art. 3, in initio, Holzm., n. 492, and Salm., de cens., c. 4, p. 43, n. 468, with Conl., argue that, even if not by themselves, they can defend themselves through others. It should be noted that, generally, censures imposed by law or by a person are not incurred by the impuberes, unless it is expressly stated in the law, as is stated regarding the entry of boys into monasteries of nuns in the Council of Trent, session 25, chap. 5, de leg., where it is said: "Whatever their age may be." The same is expressly stated regarding impuberes who are clerics and who are struck by others, from chap. Pueris, fin., de sent., eae. Thus, commonly, Leand., Sot., Azor., Sa., Sayr., etc., with Salm., l.c., near the end (against Die., ap. Croiae, l. 7, n. 42). From this, Celestine infers that impuberes cannot be held by force to reveal something. 45. — IV. To be subject: Regarding this matter, the Supreme Pontiff cannot be bound by censures, not by another, because he has no superior; nor by himself, because he is not bound by his own precepts by coercive force, but only by directive force. However, if the Pope is a heretic, then a general council can compel him through censures; from canon. Si Papa, d. 40. And therefore, bishops are not bound by censures emanating from themselves. Salm., ibid., n. 459 and 460. If, however, the censures are

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imposed by law, even bishops and cardinals do not incur them (as Salm., cited, n. 460), unless mention is expressly made of them, from chap. Quia periculosum, de sent., eae, in 6. However, Salm., ibid., at the end, with Pal., Suarez, Bon., Sayr., and comm., argue that this should only be understood in relation to suspension and interdict, of which mention is made in d.c., but not in relation to excommunication, to which bishops are subject, even if there is no mention of them in the law. 46. — Kings and queens, although subject to bishops in spiritual matters, cannot be bound by censures by new law, except by the Pope; and this is due to a privilege that is commonly attributed to them by the Fathers, as Salm., de cens., c. 4, p. 43, n. 460, with S. Anton., Pal., Corn., Avila, etc., argue. 47. — Can a bishop impose censures on pilgrims to prevent crimes? Some affirm this apud Croiae, l. 7, n. 32, because, by reason of the offense, they are already subject; but Lug., ibid., and others whom we have mentioned from Saor., Pænit., l. 6, n. 594, v., Ineurret., argue against this. Note.

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However, although the Bishop may not be able to impose a censure on a visiting person before a warning, he can nevertheless do so after that person has committed an offense in that place, and the Bishop has summoned him, according to the aforementioned points 26 and 48. — Requirement V: In order for a person to be identified, this applies only in the case of excommunication. Therefore, although he may be suspended, or prohibited from participating in a certain city or college, he cannot be excommunicated, as is commonly taught in *Summa Theologica* 3, part I, question 22, article 5, second part, by Palearius, Bona, Henry, and others, with Salmeron, ibid., number 469. Indeed, excommunication cannot be imposed on anyone who is uncertain from the community, who has committed such an offense; in this case, there is no censure at all, as noted by Rono, page 76, question 4, views, and Salmeron, in the same place, with Candida. However, this does not apply if excommunication is imposed as a sentence; for if it is imposed as a statute, or a precept, in which something is commanded under pain of excommunication, then there is no doubt that all transgressors incur it. Salmeron, cited, number 469, near the end. — It is asked whether excommunication imposed on a community as a sentence is not only illicit, but also invalid? Answer: If a censure is imposed on only some of the transgressors from the community, it is certainly not valid; as all say; but if, after examination, all the wrongdoers of that community are found, then that community can be validly and licitly excommunicated by the Pope; however, it would be illicitly excommunicated by those prelates, since it is forbidden in the canons of Rome, concerning sentences of excommunication, number 6; but it would not be invalid, as say Avila, Henry, Ledo, and others, with Salmeron, ibid., number 474. Therefore, in order for a Bishop to licitly excommunicate a community, he must excommunicate each of the

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guilty parties by name. Salmeron, ibid., at the end. — Visitors and travelers, who reside in a place for a short time, are not bound by the censures of that place, according to the general opinion, or by statutes or decrees: because they are not subject to them. Layman, in the same place, number 5, 3. Even if a subject is outside his diocese, or in a place exempt from the diocese, he does not incur a censure for violating the law of his Bishop; however, the superior, at least the regular superior, can bind his subjects, wherever they may be, to censures by a particular sentence. Layman, in the same place, 4. Heretics, apostates, and schismatics can be subject to censures, because they are subject to the Church by baptism. See Layman, in the same place, 5. Only the Pope cannot incur a censure, because he is subject to no one. Bonaventure, in the same place, 20. — It is the common opinion that regular prelates can bind their subjects to censures, wherever they may be; thus, Sanellus, Decrees, book 6, chapter 8, number 33; Croix, book 7, number 28; Contenson, *De Censuris*, part 4, chapter 3, article 3, see *Hæc Nostra*. Salmeron, *De Censuris*, treatise 10, chapter 4, page 9, number 103, with Avila, Candida, and others. There is doubt concerning Bishops: but here, several questions arise.

[*Latin ed. p. 264*]

24. — Question. I. Can a Bishop, being outside his own diocese, impose censures upon those subject to his jurisdiction? With the exception of certain cases, as will be explained below, the answer is negative, according to *Episcopi*, canon 9, question 2, and according to Clement. However, this is because of the principle of jurisdiction, since no one can exercise contentious jurisdiction in another's territory; thus, Palatinus, dist. 4, p. 5, n. 3; Council of Trent, session 25, chapter 8; *Controversia Tournensis*, loc. cit., see Questions 3; and Salmeron, ibid., n. 104, with the Council of Avranches, Cornelius, etc. The excepted cases are: I. If the contumacy is so manifest that it does not require a formal investigation, according to *Manifesta*, canon 2, question 4. II. If the cause is already known within his own territory. III. If the censure is imposed not as a judicial sentence, but as a precept or statute to prevent future crimes. IV. If the Bishop has been unjustly expelled from his diocese, in which case he can exercise his jurisdiction in neighboring areas, provided he obtains, although not necessarily secures, permission from the Ordinary of that place, as stated in Clement, *Quamvis*. V. If the Ordinary of that place consents, according to *Nullus*, canon 2, question 9. However, even in this case, the consent of the parties is required, because no one can be compelled to appear outside of their own territory; thus, Bonaventure, p. 44, n. 3; Palatinus, p. 5, n. 3; Council of Trent, session 25, chapter 8; *Controversia Tournensis*, loc. cit.; and Salmeron, de censuris, chapter 4, p. 9, n. 105, with Avila, Cornelius, etc. Salmeron, ibid., at the end, with Cornelius, notes that a Bishop, being outside his diocese, can legitimately absolve someone from censures without a formal judicial

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process, but not judicially.

22. — Question. II. Can a Bishop, being within his own diocese, impose a censure upon a subject who is present in another diocese, for a crime committed within his own diocese? Basil and Gabr, among others, deny this, see Croice, book 7, n. 46; but it should be affirmed, with the common and true opinion, because otherwise, such a delinquent could not be punished by anyone; thus, Bonaventure, p. 44, n. 43; Council of Trent, session 10, p. 424, n. 9; *Controversia Tournensis*, loc. cit.; and Salmeron, ibid., n. 107, with Cornelius, Dionysius, and Cornelius. And although a formal citation cannot be made outside the territory, it is sufficient for incurring the censure if the accused is cited in his own home or in a public place within his own territory; thus, Salmeron, ibid., n. 108. This applies even if the subject commits the offense outside the diocese, if the offense itself occurs within that diocese; as, for example, all clerics who do not attend the Synod are excommunicated, etc. Thus, Suarez, part 5, section 4, n. 8; Bonaventure, loc. cit., n. 7; and Salmeron, ibid., n. 109, with Avila, Cornelius, and Cornelius. However, it is more probable that if the crime is committed outside the territory, the accused does not incur the censure; thus, Suarez, loc. cit., n. 7; Bonaventure, n. 40; and Salmeron, ibid., n. 141, with Cornelius, Dionysius, and Cornelius (against Villalobos and Sayr). This is demonstrated in chapter 2, concerning Constitutions, in number 6. An example would be: if a censure is imposed against those who commit rape, the person who commits the rape does not incur the censure if he abducts a virgin from another diocese and commits the rape outside of that diocese; conversely, if someone wounds another person in a church, and that person dies elsewhere. Salmeron, ibid., in the middle. Or, if someone is wounded within a diocese, and the wounded person dies outside of it, as Tournhem argues, number 23.

23. — Question. III. If a Bishop imposes a censure upon his subject...

[*Latin ed. p. 265*]

A particular precept, if violated (for example, if a theft is committed); does a subject incur a censure if, by committing a transgression, he is outside the territory? The first opinion affirms this, and this is held by Suar. d. 5. sect. 5. in fin. Sper. p. 447. n. 42. Croicœ lib. 7. n. 43. Laym. c. 4. n. 8. with Abb. Sa. and Ugol. and Bon. q. 4. p. 9. n. 47. with Salas, and Fill. Ratio, because the statute refers to the territory, and therefore it does not bind anyone outside of it; the precept, however, refers to persons, and therefore it binds even those who are outside the territory. The second opinion denies this, and this is held by Holzm. t. 4. p. 359. n. 403. Contin. Tourn. loc. supra cit. v. R. 2. Ronc. p. 76. qu. 3. v. 4. with Con. Hurt. and Ant. & Spir. S. also Avila, Sayr. Henr. ap. Laym. l. c. And this is demonstrated from the following passage: In the decree "Ut animarum" 2. de const. in 6, it is stated: "By the statute of the Bishop, by which excommunication is decreed against all

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who commit theft, it is clearly understood that his subjects, who commit theft outside of his own diocese, are not bound, since one does not obey the law of the judge outside of his territory without impunity." Therefore, just as the statute does not bind because it does not affect persons, but because the Bishop is not permitted to exercise jurisdiction outside of the territory, so neither can the precept bind. Both opinions are probable, but the first seems more probable; for, it is answered to the contrary text that, since the censure is imposed by a statute, the Bishop cannot exercise jurisdiction outside the territory, because the statute immediately affects the place; and therefore, when a subject commits a transgression outside the territory, he is not acting against a law that only affects the place; but since the particular precept affects the person, and adheres to him, wherever he goes (as Holzm. himself admits), therefore, when a subject is bound by a precept outside the territory, he is also bound by the censure. However, it is certain from the aforementioned text that, if the Bishop has not previously given a subject any precept under penalty of censure, he cannot punish him with a censure if he commits a transgression in another diocese. The same must be said if he commits a transgression in an exempt place, because in that place he remains as if he were in a place outside the diocese, as stated in the decree "Ut animarum" 2. de const. in 6. Also, see Clementin. Archiepiscopo, eod. tit. 24. — Are churches and monasteries of regular canons exempt places? See the statement in l. 4. n. 456, where we stated that the affirmative opinion is probable, with Bon. Sayr. Avila, Cand. and Salm. de cens. c. 4. p. 9. n. 414, to which add Ronc. p. 76. q. 4. v. Sententia, and Croiœ l. 7. n. 26, who says with Avila, Lenr. Hurt. Delbene, etc., that if the Bishop prohibits something by a general statute, for example, gambling under a censure, the one who gambles in an exempt place does not incur that censure. 25. — It should be noted here, however, that if the matter concerns the restitution of damage to another, and the thief comes into the Bishop's own territory, and there it is agreed that the theft was committed outside, the Ordinary can rightly compel him, under a censure, to make restitution; thus, Suar. d. 5. sect. 5. n. 5. and Salm.

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Regarding censures, chapter 4, paragraph 9, number 442: If, after committing a crime, someone neglects to make due restitution, the Bishop may excommunicate him for that reason.

26. — Question IV: Can a Bishop impose censures upon a subject who is delinquent within his diocese? The answer is yes, because anyone who commits a crime is subject to the jurisdiction of the place where the crime was committed, according to chapter "De Foro," end. Exception 1: If the delinquent is superior to the Bishop, such as his Archbishop or Patriarch; otherwise, if the Bishop is not subject to that Bishop. For, although he does not have jurisdiction "par in parem," as Salm notes, ibid., page 4, num-

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ber 40, end, with Ugolin, nevertheless, for the reason of the crime, that Archbishop becomes subject to the Bishop, as Salm states, ibid., number 37, with Corn. From this reason, Croix, book 7, number 32 (contrary to Salm, dictionary, number 37), with Pign and Gibell, citing a declaration of the Sacred Congregation, states that the Bishop can even excommunicate his own Archbishop if he is delinquent within the Bishop's diocese. Regular clergy, however, are simply exempt from episcopal jurisdiction, according to chapter "Ne Aliqui," number 6. See Salm, ibid., end. And regarding exempt or privileged religious orders, such as the Mendicants and the Jesuits (see below, number 244, doubt 9), the Bishop cannot impose censures upon them, even if he acts as an apostolic delegate, as Croix states, book 7, number 30, with Pell and others. Exception 2: If the accused, before the cause is known by the Ordinary of the place, leaves that territory (as opposed to someone who commits a crime in his own country, who, even if he leaves his own territory after the crime but before sentence and citation, can still be subject to censure by his Ordinary, as we said above, Question II). Otherwise, if the delinquent, before leaving, is apprehended by citation, then, because of the initiation of the judgment, he remains subject to the Bishop of that place; thus, Council, page 422, number 44; Ronc, page 77, question 2, with Hurt; Laym, chapter 6, number 7, with Abb. Henr. and Sayr; and Con. Bian. Sylv. Avil. Corn., etc., with Salm, regarding censures, chapter 4, page 4, number 36, end, and page 9, number 445.

27. — Question V: Does a censure imposed in a certain place, e.g., against thieves in a church, or against those who do not reveal a theft, also bind foreigners present there? If the censure is imposed in the form of a particular precept or a sentence in a particular case, namely, if it is an excommunication against those who do not reveal thieves, this does not bind foreigners, because a particular precept cannot bind those who are not subject to it. Thus, comm. Suar.; Con. Dian.; Sylv.; Sayr., etc., with Salm, ibid., number 417, from chapter "A Nobis," 28, regarding sentences, exceptions. But if the censure is imposed in the form of a general statute for future crimes, such as against thieves in a church, then it does bind foreigners present in that place, if they intend to reside there for the greater part of the year; otherwise, if they are merely passing through. Thus, Sanch., regarding marriage, book 3, title 48, number 6 and 46, and Salm, ibid., number 416, with Suar.; Bon.; Sylvio; Sayr., etc. This opinion is more probable, but I do not think it improbable that, in both the first and second cases,

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Pilgrims are subject to censure, even if only for a short time; for it is quite probable that pilgrims become subject to it if, even for a short time, they remain in a certain place, according to the opinion given in *l. 4. n. 332. 28*.

Note I: It should be noted that a single censure can, for the same reason, incur other and multiple penalties. Thus, the opinion of the Doctors agrees

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with that of St. Thomas (3a, 22ae, 5, 2) and Salm (ibid., 14, 473), citing Clement of Alexandria (2, *de sent.*, exc.).

Note II: For the same offense, one can be subjected to multiple penalties by different authorities, namely by law and by human judgment, by the Pope and by the Bishop; therefore, one must be absolved by both. This is more probable, according to Suarez (d. 5, sect. 2, n. 43), Pal (p. 6, n. 5), Bon (p. 5, n. 43), and Salm (ibid., n. 476), with Fill., Corn., etc., against some. However, this must be understood: if the second superior intends to impose a truly new penalty, otherwise, the second censure is generally considered as a reiteration or publication of the first; Bon (n. 44) and Salm (de cens., c. 4, p. 14, n. 477), with Bon., Cand., Sayr., and Corn.

Note III: If someone commits two sins in a single act, which are of different species, and for which a censure is imposed, then that person incurs two censures, as if someone were to kill a cleric in a place where any killing is prohibited under censure. Otherwise, if the sin does not have multiple and different species of malice. Thus, Suarez (sect. 3, n. 43), Bon (n. 8), and Salm (ibid., n. 478), with Corn. Diana and Cand.

Note IV: If someone repeatedly commits the same offense, which is morally distinct from the first offense to which a censure was imposed, then that person incurs the censure each time; otherwise, if the moral act is not interrupted, then only one censure is incurred. Therefore, one incurs a single censure for repeatedly striking a cleric. Similarly, one who, in the same act, draws two people away from the Church incurs only one censure, as Salm (ibid., n. 479 and n. 480) states, with Lugo, Rodr., etc. A priest who is excommunicated and who receives multiple confessions at the same time; because, just as a priest incurs an irregularity if he absolves multiple people with a single absolution, so too does he incur an irregularity if he absolves multiple people successively; for then one moral act is considered. (But it is truer to say the opposite, according to what is said about sin, *l. 2, n. 50, Qu. 6*). The same applies if someone blasphemes 42 apostles with a single word, or if someone insults multiple saints in the same act; Salm (ibid., n. 483), with others, and this is probable, according to the cited book 2 on sin, n. 47.

What if someone wounds multiple clerics in the same act, would they incur multiple excommunications? Suarez (d. 5, sect. 3, n. 8), Bon (p. 5, n. 7), deny this, and they believe that it is probable, according to Con. Cand. Diana apud Salm (ibid., n. 484), because, just as this person commits one sin, so they would incur only one excommunication. And Leand. thinks the same (ib.), if the injury to multiple people occurred in the same quarrel and assault. But we follow the opposite opinion with Salm (ibid., n. 485), who cite Corn., Machad., etc., because it is more probable (as we said in the same book, 2, n. 46) that someone who kills multiple people with a single

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blow commits multiple sins.

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QUESTION IV. For what reason can censure be imposed?

29. For what sin do the penalties of censure incur?

30. Does a minor offense incur a light suspension, or an interdict?

31. Are other penalties, besides a suspension, null? And what is to be inferred from this?

32. In a doubt concerning the gravity of the matter, is censure imposed?

33. Does a precept under censure obligate under a grave penalty?

34. Must the act be external in order to incur censure?

35. Can censure be imposed against those reciting the Office who are distracted?

36. Must the act of sin be consummated? Does censure incur against one who commands, etc., even if the act is not carried out?

37. Does censure against one who commands, etc., incur even if the intended effect is not produced?

38. Observe the distinction.

39. Does censure incur in doubt, or does the command suffice?

40. What if, after giving advice for murder, he revokes it before execution?

41. Is actual guilt required?

42. What excuses from incurring censure?

43. Is it necessary to know that the crime is forbidden by the Church in order to incur censure?

44. Does this apply also to suspension and interdict?

45. Does ignorance excuse from censure, but not from a mortal sin?

46. Does grave fear excuse from censure?

47. When does crass ignorance excuse?

48. Does affected ignorance excuse?

49. Does censure incur for a sin merely past? Can Bishops impose censures for future offenses?

50. Censure is invalid I. Due to the lack of the one imposing it.

51. II. If the order of judgment is disregarded.

52. Is a warning required in all cases of censure?

53. Is censure without a warning null?

54. And when is it null because of a sin merely past?

55. Is a warning required if the censure is to be imposed by a legal sentence?

56. Must the warning be given three times with a proper interval? And

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must it come from the judge himself?

57. What if the censure is against several people generally?

58. Is censure without a three-fold warning invalid?

59. What is to be noted regarding the sentence of censure?

60. What formalities must be observed in it?

61. When are these formalities not required?

62. Does a broad censure incur, e.g., "Let him be excommunicated, or suspended"?

63. Can censure be imposed under a condition?

64. If the term has passed, does censure incur if the creditor extends it?

65. See other things to be noted concerning the order of imposing censures?

66. III. Censure is invalid due to the lack of a just cause.

67. How should one behave if there is doubt whether censure has been incurred?

68. In doubt, is the censure to be considered just? And is the accused bound to obey the judge who commands something under censure, if he reasonably believes that he is not bound to do so?

29. — Answer. For a sin that is external, proportionate, and joined with contumacy. And indeed, in the case of an interdict.

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What is local may be alien, e.g., to Prelates, or to a community, but not to a private individual; in the latter case, something else is required. Bon. p. 3. Therefore, we conclude: 1. Infants, or the insane, cannot be censured, because they do not sin. Bon. d. 1. q. 4. p. 4. Cum. c. 4. n. 3. ex S. Th. Suar. etc. 30. — 2. Although, for a venial sin, a light suspension, or a minor interdict, may sometimes be imposed: (Indeed, a suspension, or an interdict, for a short time, and depriving someone only of a certain use; otherwise, if they are for all uses, or for a long time, then they are considered as more serious censures. Thus, Suar. d. 4. sect. 4. n. 2. Pal. d. 1. p. 3. n. 2. Bon. p. 3. n. 6. Con. d. 13. n. 67. et Salm. de cens. c. 4. p. 40. n. 124. cum Avil. et Cand. Therefore, a suspension for a long time imposed for a slight fault is considered invalid, as Viva also says, see below, n. 324.); however, excommunication, a serious suspension, and a special personal interdict, whatever the case may be regarding the general, cannot be imposed except for a mortal sin, because the punishment would not be proportionate to the fault. Indeed, since these are medicinal punishments, they should not be imposed for every mortal sin, but only for some, so that the censures are not despised, as Trident. 34 states. Therefore, a serious censure imposed only for a venial fault is invalid, as commonly taught by Sanch. Dec. l. 4. c. 4. n. 3. Suar. d. 4. sect. 4. n. 2. Bon. p. 3. n. 6. Pal. p. 7. n. 2. et Salm. ibid. n. 426. et 427. And it is deduced from

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c. Nullus, caus. 14. q. 3. and from Trid. sess. 25. c. 3. de ref. Because, by both natural and divine law, the punishment must be proportionate to the fault. From this, it follows that 4. no one can incur a serious censure unless they have first committed a serious fault: and therefore, whoever is excused from a serious fault is also excused from a serious censure. It follows that 2. if something is commanded that, upon examination, is light, it will not obligate to a mortal sin, nor will a censure be incurred; thus, Suar. d. 4. s. 6. n. 9. Pal. l. c. et Salm. ibid. n. 428. cum Con. Soto, Corn. et Cand. I say, upon examination: for what is light in itself can become serious due to the added circumstance of scandal, or danger, or the intended end, and similar things: and then the command and the censure are justly imposed, so that those who transgress sin gravely, and incur the censure; just as excommunication is incurred for a slight blow by a cleric, which, although the material itself is light, is serious with respect to the reverence due to the clerical state. Similarly, the Prefect can impose a serious censure on those who do not participate in the public procession for a validly ordered reason. Likewise, clerics who, contrary to the precept, grow their hair, and so on; otherwise, if the matter is slight, and lightly contributes to the intended end. Thus, Salm. de cens. c. 4. p. 40. n. 130. et 434. cum AA. vii.

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82. — Question: In a case where there is doubt about the gravity of the matter, does the superior's command obligate, and is a censure incurred? The answer is affirmative, as stated by Salm. ibid. n. 432 at the end, and Corn. Ratio, because in cases of doubt, the superior's authority prevails. However, as Salm. correctly notes with Diana, prelates should diligently take care not to burden their subjects with censures for matters that are not very serious, when they are not certain that these matters greatly contribute to a good end.

83. — Question II: Does the very fact that a command is given under a censure make it obligating under a grave penalty? Understand this to mean: when the matter of the command is not certainly grave, nor certainly light, but is such that it could greatly contribute to the intended end; and the answer is that if the command contains a censure of latae sententiae, then it obligates under a grave penalty, because by the very fact that the superior desires the censure to be incurred, he also desires that his command be obeyed under a mortal penalty, without which the censure could not be incurred. Thus, Ronc. p. 74, q. 4, r. 2; Suar. d. 4, sect. 9, n. 44; Bon. p. 6, d. 6, n. 8; and Salm. ibid. n. 434, with Soto, Castro, Avila, and Cornejo. However, if the matter itself is not grave, and the censure is only of ferendae sententiae, so that a warning is required to incur it, as we will say here in n. 55 below, then the one who transgresses does not sin gravely, unless after a warning, or unless there is a clause in the command that without any warning, such a censure can be applied by the superior; because in that case, the command

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itself is considered a warning. Thus, Ronc. loc. cit.; and Sot., Avil., Sylv., Caj. etc., with Salm. l. c. n. 435.

84. — 3. The act of sin for which a censure is imposed must be mortal, not only in the internal act, but also in the external substance of the deed. Therefore, one who lightly strikes a cleric is not excommunicated, even if he had a mortal intention: nor is one who is internally fallen into heresy, if he has not signified it externally; because the Church judges only external matters. Bon. loc. cit. Therefore, a censure imposed for a purely internal act is invalid: for the Church does not judge internal matters, according to c. Consuluit 2, q. 3, Ratio, because, since the Church's power resides in men, these men cannot enact laws except concerning external matters, about which they alone can judge. Thus, S. Th. 4. 2, q. 91, art. 4; and Con. Pal. Sayr. etc., comm. with Salm. de cens. c. 4, p. 44, n. 436. Therefore, if someone strikes a table, or says something, intending to confirm his internal heresy, he does not incur a censure for that reason, because such an act, or word, is not of itself suitable for signifying heresy; thus, Suar. d. 4, sect. 2, n. 20; Croiæ l. 7, n. 48; Cont. Tourn. de censur. part. 4, cap. 3, art. 2, v. From these, with Sayr. and Salm. ibid. n. 442, with Turrian. Con. Castro, Diana, etc. Also, if someone commits fornication, with a heretical mind, judging that fornications are permissible, Salm. ibid. in fin. Indeed, to incur a censure, the act must not only be external, but also gravely external; and therefore, one does not incur a censure.

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He who lightly strikes a cleric, even if he intends to kill, incurs censure. Thus, Bus. Suar. sect. 3, no. 5; Sanch. Dec. l. 2, c. 8, no. 7; Cont. Tourn. l. c.; and Salm. ibid. no. 143, with Sot. Sayr. Henr. Portel, etc. It is, however, excepted that unless the internal act, whether a precept or a wish, is necessarily joined to the external act, censure does not apply, as in the case of censure imposed against those who knowingly transgress. Similarly, the Church punishes mental simony, not that which is consummated only internally and is not externally manifested; for this cannot be punished, according to the final canon on simony, but that which arises from a wicked internal intention and produces the giving of money, etc. Salm. ibid. no. 139, 35. Whether, however, censure is incurred by those who do not recite the Divine Office or do not hear the Holy Mass, who recite or hear distractedly? Croix denies this in l. 7, no. 48, and this is quite probable; but it is more probable to affirm, according to what is stated in l. 4, no. 343, v. Circa, and l. 5, no. 177, that internal attention is more likely to be required, both for the Divine Office and for hearing Mass. 36.

4. The act of sin must be perfect and complete in its genus, unless the words of the law expressly indicate otherwise; because penalties and censures are to be restricted. (Thus, Sanch. de matr. l. 3, d. 2, no. 5; Suar. d. 4, sect. 3, no. 7; Pal. p. 8, no. 10; Fon. p. 3, no. 12; and Salm. de cens. c. 1,

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p. 11, no. 144, with Con. Hurt. Avil., etc.) Therefore, excommunication for homicide is not incurred by one who favors, commands, advises, helps, or wounds lethally, unless death follows. 37.

Furthermore, when one is excommunicated for commanding, advising, etc., or for giving support to an unworthy person, it must be understood effectively, or with effect produced: because without this, the command, advice, and support are not complete and perfect in the genus of homicide, theft, etc. However, some hold that it should be considered whether excommunication is imposed primarily and intrinsically on those who command, advise, etc., or truly only accessory: and they say that in the former case, excommunication is incurred even if the effect does not follow; not so in the latter. This opinion is more practical. Bon. l. c. 38. And according to this opinion, Salm. cited, no. 144, at the end; Croix l. 7, no. 59 and 60, with others, say that if the censure is imposed against those who command or give advice precisely because of the command or advice, then censure is incurred even if the effect does not follow; otherwise, if it is imposed, but accessory, namely, because of the act that is caused by the command or advice. On this matter, Salm. l. c. p. 12, no. 147, holds that the one who commands the striking of a cleric does not incur excommunication if the striking does not occur, because then it no longer pertains to the principal act prohibited by the censure. Similarly, Salm. dict. no. 147 and Croix l. 7, no. 65, Nav. Dian., etc., assert that one who simply gave a command or advice to someone who was already determined to commit the act is excused from censure.

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39. — Question. I. Whether, in a case of doubt, or if my command or counsel has influenced an action, I incur censure? Salm. *de cens.*, c. 4, p. 12, n. 447, argues against it, in the middle, because punishment is not incurred unless the crime and its resulting effect are established; but Croix, l. 7, n. 66, along with Sanch., *Dic.*, etc., affirms it. Both opinions are probable, according to the statements regarding reserved matters, l. 4, n. 562.

40. — Question. II. Does one who commands or gives counsel for the killing of a cleric incur censure, if the counsel is revoked before its execution? The Council affirms it, p. 448, n. 14, along with Nav., Con., and Bon., because evil counsel given always continues to have influence; but more commonly and probably, Suar., d. 44, sect. 3, n. 44 and 43, Pal., d. 4, p. 7, n. 15, Laym., l. 5, c. 5, n. 7, Viva, q. 1, a. 4, n. 10, and Salm., ibid., n. 450, along with Avil., Hurt., Tab., Giball., and others, deny it, because the Church cannot bind with censures unless one is contumacious. And the same is probably said by Viva and Pall., l.c., Salm., ibid., n. 153, along with Fill., Giball., and Tab., and Croix, l. 7, n. 54, along with Boss. (contrary to Con., Corn., Avila, etc., see Salm., l.c., n. 152), even if the revocation of the counsel could not be made known to the executor, as the same authors say,

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regarding the one who gave poison to a cleric, and before it began to take effect, retracted his intention and did everything possible to prevent the effect: because, since the injury subsequently occurred, that person is not contumacious, and therefore should not incur censure, which is a medicinal punishment to prevent sin. This seems quite probable, according to the statements in n. 280, where it is more probable that the one who gave poison to a cleric does not incur censure, unless it begins to produce its effect, that is, to cause harm. And what is said about the one who gives counsel, the same should be affirmed about the one who commands. However, it should be noted that the one who gives counsel, or commands, in such a case, even if excused from censure, is not therefore excused from restitution, as Salm., ibid., n. 148, states at the end, according to the more probable opinion stated in l. 4, n. 559. Whether the one who gives counsel, or commands, or who gave poison, by revoking the counsel, or command, or by repenting of the giving of the poison, before death occurs, incurs an irregularity? See the statements regarding irregularities, n. 370. It should be noted that (the one who gave counsel, if he cannot prevent the execution, is nevertheless bound by justice to warn of the impending harm, so that he may take precautions, otherwise he will not be excused from censure, because he omits the means by which he could avoid the damage, which has already resulted from his counsel; Salm., *de cens.*, c. 1, p. 12, n. 458, at the end, because he is bound by justice to avert homicide, and if he does not avert it, it is imputed to his guilt.

44. — It should also be noted that censure, such as excommunication, suspension, or personal interdict, is not incurred except for one's own fault, as Salm., ibid., p. 10, n. 421, states, along with Suar., Bon., Corn., etc., from c. If the sentence regarding excommunication is in force, in 6. Otherwise, if a general interdict is imposed, which binds even the innocent; but in such a way that...

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They must change their dwelling place, and go forth from the city or town that is forbidden to them, or from the college, lest they remain under the ban; this is from chapter 2 of the Decrees. However, this does not apply to those who are specially excommunicated, who are excommunicated everywhere: this is from chapter 24. See *Summa causarum*, question 24, 3, 42. — "Whatever excuses from mortal sin, also excuses from a grave censure," for example, the smallness of the matter, the inability to fulfill the law, the lack of awareness and deliberation, invincible ignorance, whether it be of the fact, as when one does not know that the person struck is a cleric, or of the law, as when one knows that the person is a cleric, and that one is committing mortal sin by striking him, but does not know that that act is forbidden under excommunication. The reason is that such a person is not contumacious. 43. — In order for someone to incur a cen-

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sure, it is not enough to know that the act is forbidden by divine law, but also by ecclesiastical law, because otherwise there is a lack of contumacy against the Church, from which one must be punished. Thus, the commentators on Sanchinez, book 9, chapter 32, paragraphs 9 and 24; Viva on censures, question 4, article 3, paragraph 5; and Salmeron, ibid., page 15, paragraph 192, with Suarez, etc., agree; see below, paragraph 350, question 2. Indeed, one must know that the act is forbidden under a censure, otherwise one does not incur it; because otherwise there is still a lack of contumacy, and contempt for the censure. Thus, the commentators teach the same, as do DD. with Sanchinez, paragraph 43; Henricus Dianus, etc., with Salmeron, ibid., paragraph 493; and Crocius, book 7, paragraph 95 (against Avila, Covarrubias, etc.). Therefore, invincible ignorance excuses, not only if it is antecedent, but also if it is concurrent. Hence, if someone kills a cleric, unaware that he is a cleric, he does not incur excommunication, even though, if he had known, he might have killed him, or if the act is knowingly approved. Because neither the wicked mind, nor the ratification (unless the killing was done in his name, see paragraph 267) affect that killing of the cleric; otherwise, it would be different if he said: "I want to kill this person, even if he is a cleric"; for, if he truly kills a cleric, he will not escape excommunication. Thus, Fillon, Suarez, Paleario, Cajetan, etc., agree with Salmeron, chapter 4, paragraph 202; Suarez, book 4, title 8, paragraph 9; Bonaventure, question 2, paragraph 4, paragraph 14; and Salmeron, on censures, chapter 4, paragraph 45, paragraph 202, with Cajetan, Montesinos, Candida, Fillippo, Cornaro, etc. See the statements in paragraph 275. v. Sic etiam. 44. — What is said about excommunication, it is considered that the same should be said about suspension and interdict, according to Salmeron, ibid., paragraph 493, at the end. And it is probably asserted about irregularity, which is incurred for a crime, if the person committing the crime does not know, through invincible ignorance, that it is forbidden by ecclesiastical law, from chapter *Cognoscentes*, of the Decrees, and chapter *Proposuisti*, Dist. 82, where deposition imposed on incontinent persons is excused, who sinned, unaware, in the sin of incontinence; see Salmeron, ibid., and see below, paragraph 350, question 2. But does one incur it if one knows the law forbidding it, but not the irregularity imposed? There are two sufficiently probable opinions on this, see the statements on irregularity, paragraph 351. 45. — Question 1. Can there be any invincible ignorance that...

[*Latin ed. p. 274*]

"Does excusable ignorance exempt from censure, even if it does not exempt from grave sin? Some authorities, such as Sambh. de matr. l. 9. d. 32. n. 34. and Pal. Dian. etc. cited by Salm. 4bid. n. 496, assert that a state of ignorance can exist which is not crass, or complete, yet which nonetheless renders one gravely culpable. For crass ignorance implies the highest

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degree of negligence; therefore, they argue, an ignorance that arises from great, but not the highest, negligence, will be mortal, but not crass, and thus will exempt from censure, as is inferred from 1 Timothy 2:9. However, others object, citing Leviticus 19:20, n. 20; Bon. p. 4. n. 40; Boss. de usu matr. e. 5. n. 85; Suat. and common opinion; and Salm. 4bid. n. 497, citing Vasq. Con. Corn. etc., who maintain that the aforementioned opinion is scarcely probable in practice, since it is rarely possible to find an ignorance that is gravely culpable yet not also crass. For crass ignorance can occur not only when no diligence is used, but also when only very little diligence is employed.

46. — Question II. Does grave fear exempt from censure? Answer: If the matter is forbidden only by ecclesiastical law, it certainly does exempt, because human laws do not obligate with grave inconvenience. Salm. de cens. v. 4. p. 45. n. 203. From this, Crota l. 7. n. 402 notes that if one is commanded to reveal a crime under censure, no one is obligated to betray a confessor, or accomplice, or another, if the accusation cannot be proven, or if the betrayal would cause grave harm to the person betrayed. In the sixth place, grave fear exempts from incurring censure, even if the matter is otherwise forbidden by divine law; and therefore, one who, out of grave fear, commits homicide, which is forbidden under censure, would indeed sin, but would not incur censure, because he would not be sinning against the law of the Church, against whose authority special injustice and obstinacy are required for censure, as Pal. d. 4. p. 8. n. 9; Suat. d. 4. s. 3. n. 44; Bon. q. 2. p. 3. n. 2; and Salm. 4bid. n. 204, citing Con. Cand. Henr. etc., state. The passage in Ecclesiasticus concerning those who flee for their lives does not contradict this, as the cited Doctors explain, because the passage speaks either of a trivial fear, or when acting in contempt; see Salm. 4b. n. 208. One does incur censure, or some other penalty, who is compelled by grave fear to do something in contempt of an ecclesiastical precept, or who, out of grave fear, commits a very grave evil, e.g., if he were to kill a bishop, or to administer sacramental absolution without jurisdiction; otherwise, if, impeded by fear, he were to minister in the Sacraments, he would not incur irregularity; thus Bon. and Pal. II. e., and Salm. 4bid. n. 205, citing Mach. Con. Henr. and Corn. The reason is that in the first cases, fear does not exempt from guilt, even against an ecclesiastical precept; otherwise, in other cases.

47. — "I said invincible, because culpable ignorance, and crass ignorance, do not exempt, unless a certain condition is added in the law, e.g., he who does so, knowingly, with deliberation, or who presumes to violate the sanctity of the altar; which..."

[*Latin ed. p. 275*]

Words, especially in matters that are odious, must be understood strictly; and it cannot be said that one presumptuously acts, unless affected igno-

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rance is present, which includes formal deceit; Escob. vol. 4, chap. 6, no. 37. Sanch. de matr. chap. 3, law 9, d. 32, no. 34, 48.

The question is, whether, if a censure is imposed on knowingly sinful individuals, affected ignorance excuses them? The first, more common opinion denies this, and Suarez, d. 4, s. 40, no. 3; Pal. de pecc. tr. 2, d. 4, p. 48, no. 8; Cont. Tourn. de cens. part. 4, chap. 4, v.; Suarez, Conc. c. 49, p. 424, no. 6; Viva de cens. q. 4, art. 6, no. 7; Auct. addit. ad Spor. p. 422, no. 89; Boss. de usu matr. chap. 5, no. 463, with S. Anton. Pont. Per. Fill. Salas, Reg. etc.; also Avil. Honr. Led. Vill. etc. apud Salm. de cens. chap. 4, p. 45, no. 498. The reason is, firstly, because affected ignorance includes formal deceit; secondly, because such ignorance is equivalent to knowledge, as is proven from c. Eos qui, de temp. ord. in 6, where: "Those who, without the permission of their superior, presumptuously ordain clerics of another parish, are, for a year from the time of ordination, decreed to be suspended. And the Glossa on the word 'affected' says: 'Therefore, affected ignorance is equivalent to knowledge.'"

The second opinion affirms this, and Suarez, Dec. lib. 2, chap. 40, no. 38; Bon. d. 2, p. 4, no. 9; Ronc. p. 78, q. 4, r. 2; and Salm. ibid. no. 409, with Sylv. Tan. Hurt. Dian. Cælest. Corn. Durand. etc. The reason is, because affected ignorance is not, strictly speaking, true knowledge, which is required in penalties imposed on knowingly sinful individuals, since penalties must be understood strictly; although such ignorance may include virtual deceit, it does not include formal deceit; for he who sins knowingly against the law, truly contemns it; but he who sins out of affected ignorance, even if he wishes to be ignorant in order to sin more freely, nevertheless demonstrates some reverence for the law, inasmuch as he seeks to be ignorant out of fear, because if he knew the law, he would be deterred from sinning.

To the objection, it can be responded that in the cited text, the Bishop who unjustly ordains is suspended not only if he knows it, but also if he affectedly ignores the suspension. I do not dare to say that this second opinion is reprehensible, but I adhere more to the first, at least because it is the more common one. Sanch. no. 44, and Salm. de cens. chap. 4, p. 15, no. 200, with Cov., rightly do not approve of the opinion of Panormitani (although it may seem probable, according to S. Anton. Sylv. Rodrig. etc.), namely, that if anyone kills a cleric with crass ignorance, and even affected ignorance, he is excused from canonical censure, because there it is said: "If anyone, incited by the devil, etc.," but it is responded that these words do not imply formal knowledge for the sake of censure, but only for the sake of sin. This should be noted in conjunction with Viva de cens. q. 4, art. 4, no. 5, with Fill.

[*Latin ed. p. 276*]

That, in order to incur censure according to internal law, true contumacy is required; but for external law, presumption suffices. 49. — "6. Censure is

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not incurred for a sin that is solely contrary to natural law, or to divine law, but the precept of the Church must be contumaciously violated. Likewise, a man cannot inflict censure for a sin purely in the past, unless it in some way pertains to the future, either through scandal, or through restitution not made, or through perseverance in sin after a warning, because contumacy is lacking." (Thus, St. Thomas, *Summa Theologica*, *Quaestiones Palatinae et Salmonicae*, ibid., p. 10, n. 120, commentary.) "Nor does it matter that someone, for a past sin, or even without sin (provided a just cause exists), may be temporarily excluded from the company of others, from the altar, from Communion, etc., as is done in religious orders, and in law it is called excommunication or suspension, but broadly, because it is not the censure properly defined, the violation of which induces irregularity, but a simple penalty. Fill., vol. 44, chap. 6, n. 486. 7. He does not incur censure who transgresses the law out of grave fear, even though sometimes he may not be excused from grave guilt: because he is not considered contumacious. Laym., book 4, vol. 5, p. 4, chap. 5, n. 9. Bon., book 4, question 2, p. 3, n. 2, from St. Thomas, *Summa Theologica*, etc. It is doubted whether a Bishop can, by sentence, inflict censure for a future crime? Cont. Tourn., *De Censuris*, part 4, chap. 4, says: "Beware, prelates, lest they presume to pronounce sentences of excommunication, whether specifically or generally, against anyone for future crimes, namely, if they have done such a thing, unless a crime or offense has preceded; but Laym., *De Censuris*, chap. 2, n. 2, with Abb. Cov., and Ug. *Sporae*, and Viva, question 4, article 4, n. 5, with St. Thomas, *Summa Theologica*, etc., affirm. And this is very probable, when a just cause is present; and this is the commonly accepted practice in the Church. But the aforementioned authors respond to the contrary text, that it is to be understood when such censure is imposed without cause." 50. — "8. Censure is invalid for three reasons. Firstly, due to a defect in the one imposing it, if, for example, he lacks jurisdiction, or if he has it impeded by censure, or suspended by a legitimate appeal, about which see Laym." 51. — "Secondly, if the substantial order of judgment is overlooked, as if the accused is not summoned, nor warned under the threat of censure. The reason is, because he is not contumacious, who has not previously been warned of the precept, and the penalty attached to it. But understand this regarding censure imposed by a man through a particular sentence: because that which is imposed by law, or by a general sentence, or even a specific one, with respect to a future act, does not require another warning; because the law, or the sentence itself, sufficiently warns. The same is true of a sentence that does not impose censure, but merely declares it: one can be declared to have incurred censure without any other warning, when..."

[*Latin ed. p. 277*]

It is clearly established that the crime to which it is attached has been committed. Furthermore, for a censure to be valid, it is required, firstly, that

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the warning be canonical, that is, given three times according to the canons, although sometimes, for a just cause, one warning suffices, equivalent to three, for example, warning someone once for three times. 2º That it be recited from Scripture. 3º That the reason for the censure be expressed. 4º That within one month, a written example of Scripture be given to the accused who seeks it; otherwise, the judge himself is suspended from divine offices. Fill. t. 14. c. 4. » 52. It should be noted that not in all censures is a warning of the matter required; for in excommunication, because there, obstinacy of the matter is absolutely required, a warning is also required; but in suspension, and in a particular interdict (unlike a general one), because these censures are sometimes imposed not as censures, but as pure penalties for past sins, therefore a warning is not always required, as in c. Tam litteris . 33. de testib. c. Cum in cunctis 7. de elect. c. Sacro 48. de sent. exc. et c. 1. eod. tit. in 6. ita Pal. d. 1. p. 5. n. 5. Bonac. q. 4. p. 9. n. 8. et Salm. de cens. c. 1. p. 7. n. 80. cum Con. Gibal. et Dian. 53. — But question I: Is a censure pronounced without warning valid? No one doubts that a warning is necessary by the necessity of the precept, as in c. Reprehensibilis, de appell. etc. See Salm. ibid. n. 82. And it should be noted that the warning must be given specifically regarding the censure that is threatened, as in Suar. d. 3. sect. 14. n. 7. and Salm. ibid. n. 83. with Sot. Con. Suar. etc. comm. As for whether the warning is necessary in essence, there are two probable opinions. The first opinion, held by Suar. d. 3. sect. 8. n. 3. Bon. q. 1. p. 9. n. 4. v. Secondly, also Cajet. Dian. etc. apud Salm. ibid. n. 85. (who consider it probable), says that the Church, or the Pope, by the fullness of power, can impose censures without any prior warning. And they prove this from c. Duo sunt , d. 96. where Innocent excommunicated Arcadius for a past offense. And from c. Tanta , d. 86. where St. Gregory excommunicated some without warning for a crime already committed. The second opinion, however, is more common and more probable, held by Sanch. de matr. l. 9. d. 32. n. 13. and 21. Anacl. p. 488. q. 2. n. 49. Cont. Tourn. de censur. part. 4. cap. 3. art. 4. sect. 4. v. Dico 1. and Salm. ibid. n. 84. with Soto, Con. Avil. Corn. Giball. etc., teaches that a canonical warning must always be given beforehand, unless the censure has already been imposed by law. This is proven from c. Statuimus 3. de sent. excomm. where it is said that a canonical warning must necessarily be given beforehand, otherwise the excommunication pronounced will not be binding. And the same is said in c. Constitutionem 9. eod. tit. Furthermore, it is proven from Matthew 18:17: "And if he will not hear them." Therefore, the Church does not have the power to impose censures, except against the obstinate who do not want to hear the Church; for a censure is a medicinal penalty, which must only be inflicted upon him who, through his obstinacy, cannot be healed otherwise.

[*Latin ed. p. 278*]

No one, however, can be declared contumacious unless he has first been

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admonished concerning the penalty to be imposed. Nor do opposing texts invalidate this: for, as Salm. states in *De Censuris*, chapter 1, paragraph 7, number 86, Arcadius was excommunicated because he refused to recall Chrysostom, who had been unjustly expelled. Regarding the text in chapter *Tanta*, it is responded that there is not properly a discussion of excommunication there, but only of deprivation of the Eucharist. I stated, however, that unless the censure has already been imposed by a legal sentence, because then the law itself warns; but the following are exceptions: 4. The suspension imposed against Religious who are collecting tithes, or prohibiting, or not allowing them to be paid, according to Clement. IV, Decree 2, exception 2. 5. The excommunication imposed against Religious who are hindering the visitation of the Bishop, according to Clement. I, §, at the end, concerning the status of monks; in both cases, an admonition is required in the aforementioned texts. 54. Now, standing within common law, it is undoubtedly invalid for a censure to be imposed for a purely past sin, unless it has a subsequent effect on the future, as taught by Anael, page 438, number 17, Council, page 428, number 1, and Salm., ibid., page 10, number 120, from chapter *Ex Parte*, concerning the signification of words. For there would be no censure imposed for a purely past blasphemy, or theft. Therefore, when someone is excommunicated for theft, he is excommunicated because of contumacy, or because the thief knew that theft was forbidden by the Church under a censure, or because he was warned under a penalty of censure, and refused to restore what was taken; thus, Viva, *De Censuris*, question 1, article 4, number 5 (see the aforementioned statement, number 33, at the end). In this case, a censure is incurred without any declaratory sentence, in contrast to other ecclesiastical penalties, such as deprivation of office, or unfitness for office, which always require at least a declaratory sentence: Croti, book 7, number 77, with Lessius, Berbicius, Pellican, etc., commentary 55.

Question II: Is an admonition required if the censure is imposed by a legally binding sentence? If the censure is imposed by a human being, it is certain that an admonition is not required, because by that very precept, an admonition is already given by the judge himself, as Saneh. states in *De Matrimonii*, book 2, division 24, number 28, and Salm., *De Censuris*, chapter 1, page 7, number 90. Therefore, it is doubtful if it is required by law. There are two opinions. The first opinion states that an admonition is always required, and this is held by Pal., page 8, number 1, Suar., division 3, section 10, number 19, Laym., chapter 5, number 6, and Sulm., ibid., number 91, with Cajetan, Cornarius, *Diana*, etc., because (as stated) just as a sentence of censure is imposed by a human being, so too does a censure imposed by law require an admonition by law, so a sentence imposed by a human being requires an admonition by a human being. However, the second opinion, which is more probable, states that an admonition is not required, and this is held by Bus., as above, number 51, Bon., question 1,

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page 9, number 4, Saneh., *De Matrimonii*, book 2, division 24, number 28, also Fill., Abb., and Avila, apud Pal., number 6, who consider it probable. The reason is that in this censure, both are already present: the admonition, and contumacy; the admonition which is made by the law itself, just as...

[*Latin ed. p. 279*]

Samuel observes that the law imposes a penalty for a sentence that is not carried out, and for contumacy, because the person has already been warned and has refused to comply. The objection that the superior, in this case, is not the original legislator does not hold, because just as the original legislator can enforce the penalty, so too can the superior. It is well noted by Suarez, *Disputationes de Obsequio*, part 3, section 14, number 6; Totila, *Summa de Christiana Iure*, book 1, chapter 45, number 3; and Bona, *Tractatus de Censuris*, number 4, and page 43, number 6, with Navar, Fillon, Felth, etc., that in this case, a citation is required to declare the penalty, unless the accused presents a credible excuse; unless, however, Bona objects in the same place, number 4, that the crime is so serious that it is clearly evident that the accused has no defense.

56. — Note, however, that a canonical warning is properly given in three instances, but it is also canonical if it is given once for three (still without a reason), provided that an equivalent time is designated for that one instance, namely six days (for each warning, at least two days are required, as stated by Suarez, *Disputationes de Obsequio*, part 3, section 9, number 3, and Salmeron, *Tractatus de Censuris*, page 8, number 93, and it is gathered from the Constitution, concerning exceptions to sentences, in 6); and provided that the six-day period is assigned as a peremptory deadline, so that, otherwise, the accused would not be considered contumacious. Thus, Salmeron, *Tractatus de Censuris*, chapter 1, page 9, number 93; Bohmer, *Quaestiones Disputatae*, question 1, page 9, number 5. It is sufficient, however, if it is said: "We command that you return the item within two days, otherwise excommunication will follow immediately," because in that case, a peremptory deadline is virtually assigned: Suarez, *Disputationes de Obsequio*, part 3, section 12, number 7; Palafox, page 5, number 8; and Salmeron, *Tractatus de Censuris*, number 93, at the end.

Note II. That, for a just cause, those three intervals can be reduced to any day, or a shorter period, provided that three intervals are assigned; as stated by Bonacini, page 9, number 7; Suarez, *Disputationes de Obsequio*, part 3, section 9, number 3; and Salmeron, *Tractatus de Censuris*, ibid., number 94, with Concilii and Gibellinus. And sometimes, if there is a danger in the delay, such as if a cleric is threatened with death, or if it is a matter of suppressing violence and disturbance of jurisdiction, a single warning is sufficient without those three intervals, provided that a deadline is designated, as stated by Salmeron, *Tractatus de Censuris*, ibid., with Cornaro and Croice, book 7, number 73.

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Note III. That the warning must be given by the judge himself, or by another in his name. And if a penalty is imposed for the benefit of one party, a citation must be made at the request of that party; thus, Suarez, *Disputationes de Obsequio*, part 1, section 41, number 1; Bona, number 4; and Salmeron, *Tractatus de Censuris*, ibid., number 95, with others. The warning must also be given in writing, unless the judge proceeds ex officio, as he is sometimes obligated to do for the common good, according to the Constitution, *Venerabilibus*, section. Furthermore, concerning exceptions to sentences, in 6. Because it is sufficient if the warning is given orally, provided that it can be proven in court; thus, Salmeron, *Tractatus de Censuris*, number 95, at the end, with Gibellinus and Cornaro, from the Constitution, *Sacro*, concerning sentences of excommunication, 57.

Note IV. That if a penalty is to be imposed against several people generally, it is sufficient if a warning is given in the Church before the people; but if an interdict is imposed against a community, it is sufficient if those for whose fault the penalty is imposed are warned; thus, Suarez, *Disputationes de Obsequio*, part 3, section 6, number 2; Bona, page 9, number 41; and Salmeron, *Tractatus de Censuris*, ibid., number 96, with Gibellinus, etc. If, however, a penalty is imposed...

[*Latin ed. p. 280*]

Concerning a particular person, that person must, in that instance, be specifically admonished. However, there are three exceptions to this rule, in which it suffices to issue the admonition in their home, or if they have no home, in the Church, or in a public place. The first case is when the accused is hidden, or when fraud prevents the admonition from being delivered, as stated in Salmanticensus, *De Censoribus*, chapter 4, paragraph 8, number 96, citing Avila from chapter 6, concerning deceit and contumacy. Deceit, however, must be proven by witnesses or manifest evidence; see Council of Trent, number 9, and Cornejo with Salmanticensus, *ibid*. The second case is when the accused has already been personally summoned once; in this case, subsequent summonses can be issued at home, or in the Church, or in the tribunal, as cited by Salmanticensus, number 96, citing Bonaventure from the decisions of the Roman Rota. The third case is when it can be proven that the summons issued at home has already reached the accused, in which case subsequent summonses can also be issued at home: Suarez, Bonaventure, Cornejo, etc., with Salmanticensus, *locus citatus*, and it is inferred from Clement, *De Electione*, 58.

Note V: Although, due to the necessity of the precept, a threefold admonition is required, otherwise the judge will gravely sin (unless there is an urgent reason, as mentioned above, that excuses him), as is certain among all; however, without this threefold admonition, the censure is by no means invalid, since in the canons of Rome, *De Sententiis Excommunicationis*, 6, censures imposed without due admonition are called unjust,

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but not invalid; indeed, in the canons of the Council of Trent, *De Sententiis Excommunicationis*, they are said to be just, meaning that they are at least not contrary to commutative or distributive justice, although they may be contrary to legal justice; thus, Palearius, page 5, number 7; Bonaventure, page 9, number 6; and Salmanticensus, *ibid*, number 97, with Council of Trent, Gibal, and Diana. However, there are two exceptions in which, unless preceded by a threefold admonition, or one in place of three, as mentioned above, the censure is invalid: 1. When the judge excommunicates (or suspends, or interdicts) someone who is communicating with someone who has been excommunicated by him, as stated in the canons *Statutemus* and *Statutum*, *De Sententiis Excommunicationis*, 6. 2. When it is established that the delegate did not receive the power to impose censures except through a threefold admonition. Salmanticensus, *ibid*, numbers 98 and 59.

These points concern the admonition before the censure. Regarding the sentence of the censure, it should be noted that 1. It is not sufficient for a censure to be incurred simply by the will of a superior, but it is required that the superior clearly manifest it in writing or verbally, as is certain according to Salmanticensus, *ibid*, page 6, number 64, or even by another external sign, as commonly stated by Suarez, *d. 3*, section 2, number 3, and Salmanticensus, *ibid*, number 65, with Cornejo, Villalobos, and Candidatus, among others. It should be noted 2. That, although specific words or signs are not necessary for validly imposing censures, it is necessary that the person, the crime, and the censure are sufficiently determined; Salmanticensus, *De Censoribus*, chapter 4, page 6, number 66, citing *D. Th.* in 4, *d. 27*, question 4, article 2. The same is said of the absolution of the censure; Salmanticensus, *ibid*, at the end, with Candidatus, Cordes, and Gibal.

Note III: For censures to be lawfully imposed, the formalities assigned by Innocent IV in the canon *Cum Medicinalis*, 4, *De Sententiis Excommunicationis*, 6, must be observed, where it is stated: "Whoever, therefore..."

[*Latin ed. p. 281*]

Let him publish the excommunication in writing, and let him write down the reason for the excommunication. Furthermore, it is to be held that the written document of the excommunication must be delivered to the excommunicated person within one month, if he has been requested to do so, and regarding which request we wish to have a public instrument or testimonial letters drawn up, sealed with an authentic seal. Afterwards, it is added: "But if anyone should prove to be a reckless violator of this constitution, he shall be suspended from the entrance to the Church and from divine offices for one month." And in the same place: "And these same things are to be observed in sentences of suspension and interdict." The reason the Pontiff prescribed all these things was to prevent censures

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from being imposed hastily, recklessly, and imprudently. In addition to these penalties, which are incurred by the very act, the Pontiff assigns other penalties to be imposed by superiors, namely: 1. That the guilty party be immediately absolved from the censure. 2. That if the judge, within the month in which he is suspended from office and from the entrance to the Church, enters into those offices, he shall incur an irregularity. 3. That the same judge shall be obliged to pay all expenses, and, furthermore, to undergo other penalties at the discretion of the superior. From this, it follows that, although a censure without these formalities is valid, as is more truly held by Pal. d. 4. p. 5. n. 40, Salm. ibid. n. 73, with Avila, Leand., Gibal., Candido, etc., against Ripa and Sayr., since in the very cited chapter it is prescribed that the judge should relax the censure, therefore it is considered valid; nevertheless, the judge will undoubtedly sin gravely if he omits any of these formalities, namely, if he does not publish the censure in writing; if he does not state the reason; if he does not grant an example to the one requesting it; thus, Bonac. p. 8. n. 4, and Salm. de cens. c. 4. p. 2. n. 72, with Sayr., Gibal., etc., 64.

— It should be noted, however, I, that this applies when the censure is imposed in the manner of a sentence, with due process, with a citation, as is evident from the words in the cited chapter, "As with medicinal matters, if any judge, etc." Otherwise, if the censure is imposed by law, or even by a person, but in the manner of a general law, or a particular precept, e.g., to someone, forbidding him to do something, then such formalities are not required. Thus, Salm. ibid. n. 74, with Gibal., Sayr., and Cor.

It should be noted II, that the reason for the censure must be expressed in writing, not in general terms, but specifically; and furthermore, the writing must be authentic, so that it is sealed with a seal, and signed by the judge, or by another in his name: or at least, that which can be proven by suitable witnesses; Salm. ibid. n. 75, with Gib., Corn., etc.

It should be noted III, that, if the judge is a Bishop, it is sufficient if he pronounces the sentence of censure through another; but if he is inferior to a Bishop, he must pronounce it himself, or at least through a notary, or another minister; Salm ibid. n. 76, with Villal., Corn., Mach., etc.

It should be noted IV, that those who omit these formalities do not incur penalties if it is due to an urgent cause, which does not allow for delay, since it is stated in the text: "If anyone is reckless, etc." From this, it follows that not only does the Bishop not incur penalties, even if he culpably omits the formalities, as long as there is a special mention in the penalties of suspension and interdict.

[*Latin ed. p. 282*]

It happens that concerning Bishops, according to c. "Quia periculosum," from the collection of excommunications, in 6. Therefore, as in the cited chapter concerning medicinal penalties, among other punishments, sus-

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pension is indicated; it is clear that this sanction, just as it does not apply to Bishops with regard to suspension, nor with regard to other punishments; so also Pal. tr. 29, d. 1, part. 5, n. 9, and Salm. ibid. n. 77, with Cand. and Mac.; but neither does any other person, through culpable ignorance, omitting [to impose the penalty], because temerity requires true knowledge; according to what is stated in l. 1, n. 174. Note, V., that penalties are incurred, even if the censure does not have effect, for example, if the judge has an impeded jurisdiction, or if the accused pays or appeals. Because the Pontiff does not punish the promulgation of an unjust censure, but the promulgation without the prescribed formalities. Thus, Salm. de cens. c. 1, p. 6, n. 79, with Gibal. Felin. etc. against aliques, 62.

But here, 1. It is doubted whether a censure is incurred under a distinction, e.g., if it is said: "Let him remain excommunicated, or suspended?" There are two opinions, both probable. Sylv. Nav. Henr. etc. deny it, because, in order to incur a censure, it is required that it be individually determined in its species; but Suar. d. 3, sect. 2, n. 12, Bon. part. 7, n. 4, and Cand. Corn. with Salm. ibid. n. 68 and 64, affirm that, with a merely connective proposition, the accused is given the option of choosing the censure with which he wishes to be burdened; but if he chooses none, Bon. and Cand. say that both are incurred; but Salm. with Suar. hold that, if one is broken, the other is to be considered chosen. 63.

Doubt 2. Can a censure be imposed under a condition? It can undoubtedly be done, according to c. "Præterea" 2, de appel. But the censure is not incurred afterwards unless the condition is fulfilled. Therefore, it is not incurred if an appeal is made before the fulfillment, according to the same chapter 2, see Salm. ibid. n. 68 (Note that an appeal before the sentence of the censure suspends it; otherwise, if it is made after the sentence, Croiæ l. 7, n. 109.), or if the creditor, while the condition is pending, postpones the term for the censure assigned by the judge. Because, just as the creditor can remit a debt, so also he can postpone the term, as taught by Pal. p. 8, n. 5, Salm. ibid. n. 69, with Nav. Sylv. and Corn., and Cont. Tourn. tr. de censuris, part. 1, cap. 4, quær. 5, r. 2, and sæ cap. Pastoralis de appel, 64.

But here, doubt 3. If, after the term postponed by the creditor, the judge, without consultation, if the debtor does not pay, is the censure incurred? Ugol. Henr. Sayr. Nav. ap. Salm. ibid. n. 70, deny it, because to suspend and postpone a censure is an act of jurisdiction, which the creditor does not have. But it is more probable that Suar. d. 3, sect. 2, n. 11, Pal. p. 8, n. 6, Cont. Tourn. loc. ett. quær. 4, v. Cæterum; and Salm. l. c. in fin. with Cov. Corn. and Leand. reason, because that term is not assigned to end the obligation, but so that the solution is not prolonged beyond the creditor's consent; therefore, after the term postponed by the creditor has passed, the

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same censure remains, and is incurred.

[*Latin ed. p. 283*]

65. — Also, censure is incurred by one who, while under its condition, changes the forum, because the original forum still retains jurisdiction. Thus, Ugol. and Con. ap. Salm. on censure, chapter 4, page 6, number 68. However, as noted ibid. at the end, Con. and Suar. state that, unless there is a just cause, and not in order to defraud the domicile with the forum, the change is not permissible. Here, it should be noted: I. that censure should be imposed on days other than feast days, when it is pronounced in the manner of a sentence, according to the final canon on feast days. If, however, it is imposed on feast days, it will indeed be illicit, but not invalid, as stated by Palaus, page 5, number 43, and Salmant., ibid., page 9, number 100, with Sayr. and Corn. However, censures can rightly be imposed on feast days when they are imposed in the manner of a law or a precept; and also those that are imposed in the manner of a sentence, when contumacy is so evident that it does not require knowledge of the cause, according to the canon on evident accusations. A warning of censure is often given on a non-feast day, if knowledge of the cause does not precede; otherwise, if it does precede. Salm., ibid., at the end, with the cited Doctors. It should be noted: II. that, if a judge knows that someone has been absolved from censure in the internal forum, as taught by Henr. Fill. and Dec. ap. Croica, book 7, number 80, he is not to be punished in the external forum. It should be noted: III. that, whoever once incurs censure must be notified and made public, so that he may more quickly make amends, according to the canon in Pastoralis, § final, on appeals, and Clement., end, on censure. However, if the censure was imposed by a private individual, either in the manner of a statute or in the manner of a particular sentence, he himself must make the notification. If, however, it was imposed by common law, the notification must be made by the Ordinary of the place where the censure was incurred, according to Clement., 4, on privileges. But before the notification, there must be an investigation of the matter, to be carried out by the proper superior, who must be given a term to state his opinion, otherwise the notification will be invalid, according to Clement., Sepè, on verbal signs. Thus, Croica, book 7, number 76, with Nave, Cov., Pal., and other commentators apud Salm., ibid., number 401, and ibid., treatise on obligations, page 2, number 46. If, however, the accused offers satisfaction, he must be immediately absolved, according to Salm., with Suarez, cited, number 104, at the end.

66. — "Thirdly, due to a lack of a just cause. This can be lacking in three ways: 1. If it does not exist either on the part of the accused, or according to the allegations of the external forum. 2. If, on the part of the accused, the crime does indeed exist, but not in order to bring a judgment, because the accused does not confess it, nor is he legitimately convicted of it. 3. If, on the

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part of the accused, there is no crime, even though it is proven juridically, so that the judge has a presumed title, or cause. In this case, even if the sentence is unjust on the part of the accused, therefore, the censure will not bind in the forum of conscience; however, it must be observed in the external forum, for the sake of scandal. See Laym., page 4, chapter 6."

67. — In doubt as to whether censure has been incurred, or not, in the forum of conscience, we are not bound to act as if we were censured. And this is so whether the doubt is about the fact, that is, about the crime, for example, if one doubts whether the assault on a cleric was seriously injurious, as taught by Sanch., Dec., book 4, chapter 40, number 42, and Bon., d. 2, q. 4, p.

[*Latin ed. p. 284*]

6. §. 2. no. 49. Holzm. de cens. c. 4. n. 154. Mazz. t. 1. p. 63. Pal. d. 1. p. 8. n. 8. Laym. c. 5. §. 4. n. 38. Ronc. de 5. præc. c. 2. q. 6. et Salm. de cens. c. 1. p. 16. n. 209. cum Cand. Tanner. et Diana contra Sayr. Azor, etc. apud Bon. , or whether it pertains to the law, that is, concerning the judgment itself, for example, if one doubts whether the censure has been imposed, whether the judgment is valid, or whether the condition imposed in the judgment has been fulfilled or not, as Sanch. Bon. Holzm. Ronc. ll. cc. et Salm. ibid. n. 210. with Val. Cov. and Diana from D. Th. which Quod l. 4. art. 14. teaches, that after the determination of the judge, one must adhere to his judgment, otherwise before the determination. The reason for the doubt is that, in a doubt, no one is to be deprived of his right to communicate what he possesses; but in a doubt of the law, the reason is that penalties are to be restricted, and therefore they are not imposed in a doubt. However, if, after incurring a censure, one doubts whether absolution has been granted, or whether an appeal has been filed, and similar matters, then the accused must, in all cases, consider himself to be censured, because at that time, possession is considered to be the superior right, as rightly stated by Sanch. l. c. no. 67. and 59. Pal. l. c. and Salm. cited no. 210. with Cov. And the same should be said with Sanch. no. 60. and Salm. ib. in fin., if it is doubtful about the authority of the superior, when he peacefully possesses it. 68. — Doubt 1. In a doubt, whether the censure was just or not, whether it should be judged to be just? The Dicast. denies this, as stated in Croix l. 7. n. 123., saying that the superior is indeed in possession of the right to impose just censures, but when there is doubt about the justice of it, it is rather to be said that the subject possesses the freedom of the subordinate. And the same is held by Vasq. Sancius, etc. as stated in Viva de leg. q. 1. art. 3. n. 4. , speaking of a law that is dubiously just, Tamb. Dec. l. 4. c. 3. verb. Subditus. believes to be probable. But it is truer to affirm, as stated by Salm. de legib. c. 1. p. 2. num. 45. in fin. Viva l. c. Bonav. eod. tit. d. 4. q. 4. p. 7. §. 3. n. 44. with Vasq. Suar. and Salas: also Pal. and others commonly with Croix dict. n. 123 , because in a doubt, the power of the judge remains. Doubt 2. If the accused

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has a probable opinion in his favor, is he bound to obey a judge who orders something under censure, for example, the payment of a sum of money? This must also be affirmed, whether the doubt is about the law or about the fact, because otherwise, lawsuits would never end; as stated by Salm. de cens. c. 3. p. 4. n. 6. with Soto, Dian. Vasq. and Avila. However, Salm. ib. in fin. with Avila, rightly points out that, in a doubt of fact, this applies only during the doubt; for if, afterwards, the censured person becomes certain of his innocence, then he is not bound to pay, nor to behave as a censured person; for then, the judgment cannot obligate, since it is based on a certainly false presumption. But if such a person violated the censure in public, for example, in the administration of the Sacraments, although he would not incur an irregularity, he would still sin due to the scandal; and in that case, he should behave externally as an irregular person, as stated by Suar. d. 4. sect. 7. num. 41. Pal. p. 8. n. 45. and 46. Croix l. 7. n. 84. and Salm. eod. tr. c. 4. p. 16. n. 212. with Coninck. However, this must be understood, unless the censures are publicly declared to be null, so that there is absolutely no scandal; as stated by Salm. tr. cit. c.

[*Latin ed. p. 285*]

3. p. 4. n. 5. concerning the *Navis Avila*, etc., from Clement's *Pastoralis*, concerning matters already judged. Furthermore, he notes from *Controversae Tournenses* with D. Th., from chapter *Pastoralis* concerning office and judicial power, that an executor of a sentence, which is just according to what is alleged and proven, is bound to order its execution, even if, from private knowledge, he knows it to be unjust; otherwise, if the sentence is entirely unjust even according to what is proven, from chapter *Super eo*, concerning the crime of false witness.

DOUBT V. Who can absolve from censures?

69. A distinction must be made between a censure imposed by a particular sentence from a person, and a censure imposed by law, or by a person through a general sentence.

70. Who can absolve from censures imposed by law?

71. Can all confessors absolve from minor excommunication? Can a simple priest?

72. Who can absolve from censures imposed by a person through a particular sentence?

73. Who, if imposed by a general sentence against undetermined persons?

74. Which censures can be absolved by the Bishop through the chapter *Liceat*?

75. See the words of the chapter.

76. Note I. Can a Bishop dispense in an irregularity due to heresy?

Note II. When is a crime considered hidden, or brought before the fo-

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rum?

77. Doubt 1. Can someone be absolved by a Bishop who has been punished in the forum of another Bishop?

78. Doubt 2. Can a public crime be absolved by a Bishop in one place, where it is hidden, in another place?

79. Note III. Those who come in the name of Bishops.

Note IV. Those who come in the name of subordinates.

Note V. Bishops can absolve from papal cases, even hidden and reserved, even after Trent. (Referring back to book 6, n. 594.)

80. Note VI. Do Bishops enjoy this power where Trent is not accepted?

81. Question I. Can a Bishop dispense in irregularities, and suspensions with his subordinate in a foreign diocese?

82. Question II. Has the power granted in chapter *Liceat* been revoked by the Bull *Cænæ*?

83. The truer opinion.

84. Question III. Can Bishops absolve from censures that prevent someone from going to Rome by the Bull *Cænæ*?

85. Question IV. Who are considered impeded?

86. What if the impediment is for a short time, and what if it is for a long time?

87. Is the absolved person then obligated to present himself to the Pontiff, if he has already been reformed, and has satisfied the injured party?

88. What if the impediment is perpetual? And who are considered perpetually impeded?

89. Question V. Are the impeded obligated to go to Rome by letter, or through a procurator?

90. Question VI. Can a Bishop absolve a heretic who is impeded, even through another?

91. Question VII. If a lower cleric absolves an impeded person from a reserved case without censure, is the penitent obligated to present himself to a superior?

92. Question VIII. Can the impeded go to the Bishop and be absolved by anyone?

93. Question IX. Can Bishops generally delegate to others the power granted to them in chapter *Liceat*?

94. Concerning the power reserved to mendicants to absolve.

95. Which censures can religious absolve concerning seculars?

96. Can they absolve them from papal cases, even hidden?

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97. Whether this pertains to external matters?

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98. Whether this pertains to cases reserved to the Bishops?

99. Whether this pertains to censures reserved to the Bishops, either by law or by custom?

100. Whether this pertains to cases concealed by Clement?

101. Whether the Regular clergy can absolve their subjects from all papal cases, outside of the Bull of Cenae?

102. Even novices?

103. Even novices from censures reserved to the Bishop?

104. Whether the Regular prelates can absolve their subjects from cases pertaining to the Bull of Cenae? Up to number 106.

107. From censures imposed due to the offense of another Religious, or a secular cleric.

108. What about those who receive the Bull of Cruciatae? Remissively.

109. Rules for absolving from censures.

110. If, having been granted the power to absolve from papal penalties, this includes censures pertaining to the Bull of Cenae?

111. In a Jubilee, if power is granted to absolve, does this include all censures, even those specifically imposed by the Bishop?

112. If one has the power regarding cases pertaining to the Bull of Cenae, can they also absolve from heresy? Up to number 113.

113. What is important to note regarding the powers of the Regular clergy?

114. What is important regarding the power granted during a Jubilee?

69. — R. ESP. 4. A censure imposed by a particular sentence of the Ordinary can only be absolved by the one who imposed it, or their superior or successor, or a delegate. From those imposed by common law, or by a person through a general sentence, anyone can absolve, who can absolve the censured from mortal sins; but if it is truly reserved, only the Ordinary, or themselves, can relax it by the author of the law, or their successor, or a delegate. I said 1. "Ordinary," because in articulo mortis, any priest can absolve from any censure. I said 2. "themselves," because by accident, and by privilege, others can also. Laym. l. 4. t. 5. p. 4. c. 7.

70. — In general, the same conditions are required to remove censures as are required to impose them, according to what was said in number 42. However, it should be said that 1. The Bishop, or their own priest, can absolve from censures imposed by law and not reserved, according to c. Nuper, concerning excommunications. Where, although the passage concerns a lesser excommunication, the same is understood by the Doctors to apply to all other common censures; as Pal. d. 4. p. 44. §. 5. Roncaglia de censuris c. 6. quæst. 3. r. 114. Suarez d. 7. sect. 3. n. 2. and Salm. de cens. c. 2. p. 4. n. 42. with Henr. Ugol. Corn. and Gibal. commun. And this is granted to the prelates of religious orders, and those who have quasi-episcopal

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jurisdiction, even when the See is vacant. But can all confessors absolve from such censures? St. Antonin, Cov., Palud., etc., say no, according to Salm. ibid. n. 43. Because, as they say, just as for imposing censures, so also for absolving them.

[*Latin ed. p. 287*]

It is required that jurisdiction be present in the external forum, which simple confessors, and even parish priests, lack. However, it must be affirmed, in accordance with the common opinion held by St. Thomas in *Supplementum*, question 24, article 4, where he states: "If the excommunication is major, or is imposed by a judge, then that person who imposed it, or his superior, can absolve; or if it is imposed by law, then the Bishop, or even a priest, can absolve." Similarly, in Cont. Tourn. de cens., part 4, chapter 4, article 4, reply 5, Council p. 441, number 3, Pal. l. c., Ronc. as above, Salm. de cens., chapter 2, p. 4, number 44, with Soto, Vasquez, Council of Avila, etc. The reason is that, although, according to ordinary law, neither confessors nor parish priests have this power, they do have it by a special concession from the Holy See, as stated in the decree *Nuper* 29: "In the second case (namely, when the excommunication is not reserved), absolution can be obtained from one's own Bishop, or from one's own priest." Although, even then, the bond is imposed by the judgment of the judge, and not by law, nevertheless, since the Founder of the canon did not specifically reserve the absolution to himself, it seems that He has conceded the power to others to remit it. Therefore, whenever the censure is not reserved by law, the power to absolve is granted by the law itself to any confessor, as is understood under the name of "one's own priest," as we have demonstrated in book 6, on the Eucharist, number 564. And here, it should be noted that this absolution is valid even in the external forum, as stated by Pal. number 4, and Gibal. Ugol. apud Salm. l. c. Ronc. p. 80, question 3, reply 3, with Council Pal. d. 2, p. 44, § 5, number 3, with Suar. and Ugol. Sporer Suppl. p. 124, number 55, with Avila, and Salm. dict. number 44, at the end, with Council, that parish priests, and other confessors, can impart this absolution both internally and externally. The reason is that the decrees of the Popes usually pertain to the external forum, and since these favors should be extended, it is not proper to restrict them to the internal forum. Salm. ibid. number 49, with D. Th. Pal. Sot. Vasq. and others, number 45, against Candid., states that confessors can absolve not only from excommunication, but from all other censures that are not reserved, namely, from suspension and personal interdict, because absolution of these does not require the perception of the sacrament of penance. The reason is that, since this concession is favorable, it is deservedly extended to all censures.

It is certain, and a common opinion among all Doctors, that all Bishops and confessors can absolve those who are bound by a minor excommunication. See Salm. de cens., chapter 3, p. 44, number 464. But it is greatly

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doubted whether a simple priest can absolve from a minor excommunication? Salmant. ibid. number 166, with Navar. Arm. and Hurt., affirms this, and it is considered probable by Bon. q. 3, number 15, and Viva q. 2, article 2, number 5, because (as they say), since a priest can probably absolve from venial sins, he can also absolve from the censures attached to them, according to what is said by St. Thomas in 4th Distinctio, 28th question, article 4, question 4. Anyone can absolve from a minor excommunication, who...

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It is possible to absolve from the sin of participation. But it must be entirely denied, as stated in Suar. d. 7, sect. 4, n. 47; Pal. d. 2, p. 24, n. 23; and Soto, Cajet., Corn., and Led., as cited by Salm. ibid., n. 165, for two reasons: first, because in the decree *Nuper, de sent. excomm.*, it is stated that a minor excommunication must be absolved either by the Bishop or by the individual's own priest, which clearly cannot refer to a simple priest; and second, because, according to the decree of Innocent XI, as cited in l. 6, n. 543, v. Quær., it is today forbidden for simple priests to absolve from venial sins. These reasons render the first opinion entirely improbable.

72. — Regarding censures imposed by a human authority, it should be said that if a censure is imposed in the form of a particular judgment against a specific person, it cannot be absolved except by the one who imposed it, or by his superior, or by his successor, or by a delegate. This is certain and common; see Croiae l. 7, n. 131, and Salm. c. 2, p. 4, n. 50. However, if a judge in an external forum testifies that the person censured has already satisfied the requirements or has been reformed, then it is considered that the judge himself has absolved, or that he is granting absolution to anyone. Salm. ibid. And here, it should be noted: first, that a Bishop can absolve his subjects in a foreign territory, both in the external and internal forum, provided that the absolution is given without judicial fanfare, as stated by Sylv. Henr. Avil. with Salm. ibid., n. 36. Second, that if someone commits an offense in a foreign territory and is specifically excommunicated by the Bishop of that place, he cannot be absolved by his own Bishop without the permission of the local Bishop. Thus, Cont. Tourn. loc. cit., Diana, Cand., and with Salm. de cens. c. 2, p. 4, n. 37. I have said "specifically," because if the excommunication is by a general sentence, he can be absolved by anyone, as will be explained shortly.

73. — If, however, a censure is imposed by a person in the form of a statute, or a general sentence against undetermined persons, or for the future, e.g., against all who commit this crime, or in the past against all who have committed this crime (assuming contumacy, as stated above, n. 54), then others, as stated by Suar. d. 7, sect. 2, n. 23, and Vasq. Fill., etc., as cited by Salm. ibid., n. 50, hold that absolution can only be granted by the one who imposed the censure, because, according to the rules of law,

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a censure imposed by a human authority can only be removed by the one who imposed it. However, it is more probable to say that absolution can be granted by any confessor, if the censure is not reserved, as stated by Bus., as held by Pal. §. 4, n. 10, Laym. c. 7, n. 3, Ronc. qu. 3, resp. 14, Conc. p. 443, n. 6, Holzm. p. 365, n. 127, Sporer. Suppl. p. 124, n. 53, and Salm. ibid., n. 54, with Con. Sayr. Tol. Sot. Avil. Bon., and Croiae lib. 7, n. 128, with common opinion. The reason is that these censures are equivalent to censures imposed by law, and therefore can be absolved by anyone, since we are dealing with a matter that is favorable and should be extended as far as possible, as stated in cap. Nuper, de sent. excom.

74. — In response to question 2: According to the Council of Trent, session 24, canon 6, Bishops can, through themselves or their Vicar, absolve in the forum of conscience from all...

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By secret censures, even in matters reserved to the Pope by the bulla *Cæna*, except for heresy, from which they can absolve only by their own authority (to the extent permitted by this decree). A secret censure is one imposed for a fault that is not public, and has not been brought before a court of law, or if it has been brought before a court, the accused was acquitted due to lack of proof. Bonac. dub. 4, q. 3, part. 1, n. 45, and part. 2, n. 4, from the declaration of the Cardinals, etc., 2. They can also often absolve from censures reserved to the Pope, due to an impediment of the one who incurred the censure, or when, due to old age, illness, sex, or poverty, the Pope cannot be approached. Bon. loc. cit. from Nav. Sanch. Avila, Conc., etc., 75.

Regarding the power that Bishops have concerning sins reserved to the Pope, the following words of the Council of Trent must first be noted, in session 24, chapter 6: "It is permitted to Bishops to grant dispensations in all irregularities and suspensions arising from hidden faults, except those arising from voluntary homicide, and except those which have been brought before a court of law; and in all hidden cases, even those reserved to the Apostolic See, to freely absolve the guilty... subjects in their diocese, either by themselves or by a Vicar specially appointed for that purpose, in the court of conscience, imposing a salutary penance. In the case of the crime of heresy, it is permitted to them only, and not to their Vicars, in the same court of conscience."

From this, the following should be noted: I. That Bishops, although they cannot absolve from heresy, according to the opinion which we will soon explain, can nevertheless grant a dispensation in an irregularity contracted from hidden heresy. Thus, Potest. t. 4, n. 3338; Salm. de cens. c. 2, p. 5, n. 54. Note II. That for a crime to be considered not hidden, it is required that it either be brought before a court of law, or that it be known to almost everyone, as Viva says with Suar., or at least to a majority of the inhabitants

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of a town, neighborhood, parish, college, or monastery, as Bonac. § 4, Sanch. de matr. l. 8, d. 34, n. 35, Salm. ibid. n. 59, with Pal. Pell., etc., say. Thus, a crime is still considered hidden if it is known to five or six people, as the cited author (Instr., etc.) says, p. 2, c. 43, n. 300. See the words in l. 6, n. 593, v. Also, n. 4444. On the other hand, a crime is considered to have been brought before a court if it has been proven there by at least one witness; otherwise, if it has not been proven in any way, even if the accused has obtained this result through deceit, and has been acquitted there, because in that case it is still considered hidden; thus, Sanch. de matr. l. 8, d. 34, n. 57; Bonac. q. 3, p. 2, n. 2, and Salm. ibid. n. 60, with Conc. Avila, Henr., etc. Indeed, it is considered hidden, even if the crime of an accomplice has been brought before a court, because from l. 4, c. Res inter, etc., "matters between others cannot affect others, to whom the res judicata does no harm." Thus, Salm. de cens. c. 2, p. 5, n. 60, in fine, with Nav. Bon. and Sanch.

77. But here arises the doubt: 4. Whether a person can be absolved by a Bishop from a sin.

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A papal case, which has already been punished in the forum of another Bishop, where the judgment has been concluded? The first opinion affirms this, and Sanch. l. 4. c. 44. n. 21, and Salm. ibid. n. 62, agree with this, along with Reg. Avila, Leandro, etc. The reason is that the intent of the council was to preserve the authority of the judges, and to avoid scandal, if public crimes were not publicly punished; but in this case, neither scandal is present, nor is the authority of the judges prejudiced. The second opinion, however, which is more common and truer, denies this, and is held by Suar. d. 4. sect. 2. n. 6, Pal. t. 1. tr. 4. d. 4. p. 3. §. 4. n. 47, Barb. all. 39. n. 3, Conc. p. 445. n. 12, Bon. de irreg. qu. 5. p. 4. n. 6, along with Garcia, and Rodr. and Croix l. 7. n. 146, along with Mascard, Menoch, etc. The reason is that, although satisfaction has been given to the judge, once the crime has become publicly known juridically, it remains simply public, and as such, it is entirely reserved to the Pope. 78. — Question 2. Can a crime, publicly known in one place, be absolved by a Bishop in another place, where it is hidden? Bon. d. 4. q. 3. p. 2. n. 3, and Suar. t. 4. d. 30. sect. 2. n. 3, deny this; but Sanch. l. 2. c. 14. n. 20, Cont. Tourn. tr. de irreg. part. 3. cap. ult. not. 2, along with Piasec, Barb. all. 35. n. 28, along with Gutt. and Salm. cit. n. 62, along with Trull. Leand. Avila, and others apud Croix l. 7. n. 144, probably affirm this, provided that the place where the crime is known is so distant that there is no fear that it will be made public where it is hidden. 79. — Note III. It should be noted that, by the name of Bishops, Abbots, and others who have episcopal jurisdiction are included, as Sanch. n. 6, and Salm. ibid. n. 54, say, along with Henr. Dic. and Avers. (against Bon. and Suar. apud Croix l. 7. n. 144). See the statements in l. 6. n. 593. See the same. It also applies to the Chapter, when the See is vacant,

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as Bon. n. 4, Sanch. n. 4, and Salm. ib. in fin. Note IV. By the name of subjects, even vagrants, and all those who intend to remain in that place for a greater part of the year, are included, as Croix l. 7. n. 436, says, along with Sanch, Suar, Bon, Barb, etc. Note V. It should be noted that Bishops, by the force of concession in the aforementioned decree, can absolve from papal cases even after Trent, as we have said is probable in l. 6. n. 594. Question 9. 80. — Note VI. Regarding the faculty granted by Trent to Bishops in the aforementioned decree, to absolve or dispense from papal cases, or from hidden irregularities, which is what Fagn. says in c. Dilectus 45. de temp. ordin., where he says: "According to the opinion of the holy council, Bishops of those regions in which the council has not yet been received, cannot make use of the faculty granted in this decree." He then notes that it was declared by Gregory XIII. that this faculty does not even belong to Cardinals, even if they hold the title of Churches of the City. 81. — Question I. Can a Bishop dispense in irregularities and suspensions hidden from his subject, who resides in another diocese?

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The first opinion denies this, and this view is held by Avila, Henriq., and Ugolin, as cited by Barbieri in the Tridentine Council, session 24, chapter 6, paragraph 44. The reason given is that the Council granted Bishops the power to dispense only within their own diocese. The second opinion, which is more common and more probable, affirms this, and this view is held by Sanchez, Decretales, book 2, chapter 11, paragraph 42; Suarez, part 41, section 1, paragraph 40 and 12; Bonaventure, book 1, question 3, paragraph 2, paragraph 1; book 7, question 5, paragraph 1, paragraph 4; Diana, page 4, treatise 4, response 96; Controversiae de censura, part 1, chapter 5, response 3; Salmeron, de censura, chapter 2, paragraph 5, paragraph 53; and Barbieri, with Bossuet, Marchiani, Fagius, etc. The reason given is that a dispensation can, in itself, be granted to an absent party; therefore, it is not necessary for the one granting the dispensation to be present in the diocese, since the act of voluntary jurisdiction can be exercised even outside the territory. It does not contradict this that it is said in the Tridentine Council "in his own diocese," because it is answered that this phrase is either sufficiently understood, since either the Bishop or the subject is present in his own diocese, as stated by Controversiae de censura, cited above, and by Salmeron, cited above, paragraph 53; or that the aforementioned phrase refers only to the second part, where the matter of absolution of sins is discussed, as stated by Suarez, paragraph 40, and Sanchez, paragraph 43; Holzmüller, page 413, paragraph 227, with Palafox, Pignatelli, and Croix, paragraph 139. From this, these authors infer that even if both the Bishop and the subject are outside the diocese, the Bishop can properly grant a dispensation from an irregularity and absolve from suspensions. However, whether the Bishop can absolve, and delegate the power to absolve from

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secret sins reserved to the papacy outside of the sacrament of penance, is affirmed by Sanchez, Suarez, Bonaventure, and Salmeron, de censura, chapter 2, paragraph 3, paragraph 54. But this must be entirely denied today, as declared by Gregory XIII, in relation to book 6, number 593, 82.

Question II: Has the aforementioned power granted to Tridentine Bishops been revoked by the Bulla Cœna regarding heresy, and other cases reserved therein? There are two opinions on this. The first opinion denies this, and this view is held by Navarret, Manual, chapter 27, paragraph 260; and by Bannez, Vega, Salazar, Arragone, English theologians, Henry, Fagius, etc., as cited by Barbieri, in the appendix, 40, paragraph 21; also by Coninck, Avila, Becan, Granado, P. Ledo, etc., as cited by S. Milante, in proposition 3, Alea VII, and it is considered probable by Salmanticensis, ibid., paragraph 56. The reason given is that in the Bulla Cœna, no mention is made of the concession made to Bishops by the Tridentine Council, but by a general clause, the powers granted by the General Council to someone are not minimally revoked, as is stated in "De capellis monasticis" with the Glossa, "Nulla mentio," and in "Nonnulli, de rescriptis," and ibid., Glossa, "Fecerit mentionem." And according to this first opinion, Salmanticensis, ibid., paragraph 54, with Navarret, Henry, and Granado, and Felix Potesta, with Dicena and Diana, note that the Bishop, concerning the crime of heresy, cannot grant another a general power to absolve from it, since such a power has been granted by...

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The council can only address the bishops, not their vicars; however, it can delegate this power to another in a particular case; because, since this power is attached to the episcopal dignity, it belongs to the bishops by ordinary right, and therefore it can be delegated by them in any way that is not expressly forbidden to them.

The second statement is truer, and this is held by Sanch. Dec. l. 2. c. 44. n. 27; Pignat. t. 4. Cons. 294; Lugo de pænit. d. 23. sect. 2. §. 4; Anacl. de Fide d. 4. p. 124. n. 30; Tolet. in explic. B. Cænæ n. 14. in fin.; Diana p. 7. tr. 2. r. 23; Ronc. de cens. tr. 4. q. 4. c. 6. q. 4; Croiæ l. 6. p. 2. n. 1617; Viva in prop. 3; Alex. VII. n. 7; Vidal in ead. prop.; Holzm. t. 4. p. 386. n. 218; Mazz. t. 3. p. 460. n. 2; Elbel t. 2. p. 486. n. 253; Barb. all. 40. n. 23, with Sayr; Molin; Philiarch; Homob; Ugol, and many others; also Fagn. l. 4. in c. Quoniam, de constit. n. 28, where it is stated that this was decided by the Sacred Congregation. Two similar declarations are given by Pitton. de Episcop. n. 960 and n. 4026, one issued on December 4, 1642, and the other on October 28, 1741. The same opinion is entirely held by Benedict XIV. de Syn. l. 9. c. 4. n. 4, with Cardinal Petra, Duard, Cleric, etc., and he testifies that Father Suarez previously considered the first opinion to be more probable, but then, in tr. de Fide d. 4. §. 4. n. 43, he recanted from it, and asserted that it was truly devoid of all probability.

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Our opinion is proven by the very words of the bull Cænæ, where it is said: "No one can be absolved by another, except through the Roman Pontiff, unless at the point of death, under any pretext of faculties or indulgences, to any person, even one endowed with episcopal or higher dignity... by Us and by this Holy See, and by the decrees of any (note) council granted, or to be granted." From these last words, it is already clear that the concession granted to Trent has been revoked. The objection that a general clause does not revoke the faculties granted by a general council does not hold. For it is answered that this is the case when the revocation is made by rescripts, and not when it is made by pontifical constitutions; in the aforementioned texts (as is clear to the reader), only rescripts are discussed. There is a very great difference between rescripts and pontifical constitutions; for rescripts, because they are contrary to the law, and because of the importunity and multitude of petitioners, are not made with the same deliberation and counsel as the constitutions of the Popes and the decrees of councils; therefore, what is said about rescripts does not apply to constitutions, as well noted by Fagn. in d. c. Nonnulli, de rescript. and Ronc. de leg. p. 47. q. 4, with Cardinal de Luca, and others. Therefore, Fagn. observes n. 24 that Trent revoked several decrees of general councils, without mentioning them. Indeed, Fagnan testifies in l. 3. in c. Nulla, de concess. præb. n. 86 that St. Pius V, in a certain Motu proprio (related to a letter from Nic. Garcia), declared that it is sufficient to revoke a council if the Pope disposes otherwise, signing the petition with his own hand. Furthermore, the praised Benedict XIV.

[*Latin ed. p. 293*]

It is testified that Saint Pius V and Gregory XIII (and the same is asserted by P. Viva in his work, book 1, page 4, and by others apud Barb.) that, when explicitly questioned about this matter, they responded that no one, except the Pope, could today absolve someone from heresy, even if it were hidden. Furthermore, in the life of Saint Francis de Sales, written by Peter Galitia, book 2, chapter 32, it is stated (as noted by the same Benedict) that when Pope Clement VIII presented Saint Francis de Sales for examination for the episcopate, and asked him whether a bishop could absolve someone from heresy, he responded affirmatively. However, the Pope added: "But We do not think so." And then Saint Francis said: "Most Blessed Father, if Your Holiness does not think so, then I will no longer think so either." In response, it is said that, even if a special mention was required to derogate from the decree of Trent, this is already present in the aforementioned Bulla Cœna, since it is stated that a bishop cannot absolve someone from the censures of the Bulla, under the pretext of the faculties granted by the decrees of any council. What more explicit mention could have been made? Especially since only the Council of Trent, and no other, granted such a faculty to bishops. In addition to this, there is the damage to proposition

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3 by Alexander VII, which stated: "The opinion that the Bulla Cœna only prohibits absolution from heresy and other crimes when they are public, and that this does not derogate from the faculty of Trent, in which the matter of hidden crimes is discussed," was seen and tolerated in the Sacred Congregation in the year 1629, on July 18th. Therefore, Viva, Holzmüller, Elbel, and Benedict XIV rightly say that, through this tolerance, the first opinion was so deprived of its probability (if it had any) that it no longer appears probable. It is objected that the Pope did not condemn the opinion, but only that it was seen and tolerated in the congregation; and therefore, they believe that he left it in its probability. But it is answered that, although the Pope directly only condemned the fact, namely that it was seen and tolerated, he nevertheless openly wounded the opinion; for if he had not considered it false, he would certainly not have been so concerned about condemning that falsehood; since he declared that it was not tolerated, he implicitly declared that it was not worthy to be tolerated. From all of this, the aforementioned Benedict XIV concludes, in the cited passage, number 4, that today it is not without a certain presumption for bishops to claim this authority (namely, to absolve from heresy) for themselves, and even less to delegate it. Therefore, a bishop can only absolve a notorious heretic as an apostolic delegate, as Roncaglia says in his work, with Paleari and Farinac. After the excommunication has been removed by a bishop, any confessor can absolve the sin of heresy.

84. — Question III. Can bishops absolve those who are subject to the censures of the Bulla Cœna from going to Rome? There are three opinions. The first absolutely denies it, according to Bonacini, in "De Censuris," dispute 4, question 22, page 2, number 22, who cites Suarez and Innocent (but says "in simili," therefore, the aforementioned Doctors are not speaking properly about this opinion). The reason given by Bonacini is that in Volume V...

[*Latin ed. p. 294*]

The Bulla [Bulla] only exempts the article of death, since the contrary cannot be proven by any law. However, it does not grant an indulgence (as some claim) in this case, where the contrary intention of the Pontiff is established; nor does the text cited below object, because either there is no faculty granted to Bishops to absolve in those cases, or, if it is granted, it has been revoked by the Bulla Cœnæ, as the decree of Trent [Tridentini] was revoked. However, Bonaventure, n. 23, exempts cases of grave necessity, such as celebrating, administering Communion, and the like. The second opinion grants Bishops the power to absolve from all other cases, but denies the power to absolve from heresy. Thus, in Alexander III, Conf. Mon., c. 6, § viii, questions 3 and 4. The reason why heresy is exempted is because, in a general concession (such as in a Jubilee), the faculty to absolve from cases is granted in the Bulla, but not the faculty to absolve from heresy, as declared by Gregory XIII. But this reason is weak, for, as will be explained

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below, this faculty does not arise from the concession, but from the indulgence and the presumed intention of the Pontiff. The third opinion, which I follow, teaches that Bishops can, either by themselves or through others specially delegated by them, absolve legitimately in both forums those who are impeded from all cases, and even from heresy, provided that the one who is absolved swears to present himself to his superior later, as will be explained below. Thus, Palearius, disp. 4, p. 2, § 5, n. 6; Rone, d. qu. 2, r. 44; Layman, de censur., c. 2, n. 63; Council of Trent, p. 445, n. 43, with Lugo de pœnit., n. 248; Salmeron, tr. 40, c. 2, p. 5, n. 63, and tr. 48, c. 4, p. 4, § 44, n. 464; Viva, in prop. 3, Alexand. VII, n. 5; Milante, ibid., with Council of Avila, Corn., etc.; Potestas, t. 4, n. 3347, with Tamb., Donatus, Leand., Pellizzari, and the common opinion of theologians and canonists, as testified by Rone, l.c. The reason is that, when there is an impediment to approaching the Pope, the ordinary power of the Bishops is restored, not already by virtue of Trent, but by virtue of common law; and this is proven from c. 13 de sent., excom., where it is said: "Women, the elderly, and the infirm, or those impeded by the loss of limbs, although they may not come to the Apostolic See, may be restored to the communion of the faithful by the Bishops." The same is affirmed in c. Quamvis 58 of the same title, where it is stated that a person who has struck a cleric must be absolved by the Apostolic See: "Unless (it is added) he is hindered by the article of death, infirmity, enmity, or lack of resources, by childish or old age, frailty of body, or any other impediment, either canonical or otherwise, so that he cannot approach the Roman Pontiff." The same is stated in c. De cætero, and in c. Nuper 20 of the same title, where it is generally stated at the end that whenever someone can scarcely, for a just reason, approach for absolution from excommunication the one from whom he should be absolved, he is absolved by his Bishop, or his own priest. Although the aforementioned canons speak of absolution from censure for striking a cleric, because this is more common, the Doctors commonly extend this to all other censures, in which the same reason for the salvation of souls applies, from c. Cum dilectæ, de confirmat., etc.; for the Glossa notes: "Where the same reason exists, the same law should apply." Thus.

[*Latin ed. p. 295*]

Salm. Potest. Ronc. etc. l. c. Nay, (as Ronc. aptly notes, ibid.) in c. Eos qui 22, concerning reserved cases, in 6, it is universally held that all reserved cases of the Pope, when there is an impediment to the Pope's presence, can be absolved by another; thus it is stated there: "Those who, by the sentence of a canon, or of a man, cannot, because of a legitimate impediment, have recourse for the benefit of absolution to him from whom they ought to be absolved, are absolved by another." By these words, "by the sentence of a canon," are understood all cases reserved to the Pope, as the Glossary notes, at the word "Canon," 85. - Question IV. What are considered

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legitimate impediments? It is stated (as is found in d. c. Ea noscitur 13, concerning reserved cases) that women, the elderly, and the infirm are impeded. Added to these are children, the poor, those who have enmity, or other just excuses (as is said in c. De cætero, ibid.), by which they can reasonably be excused from the journey. These words encompass all other just impediments, which we will note below. 86. - But it must be noted beforehand that if the impediment is for a short time, then the censure reserved cannot be absolved by another, unless there is a necessity for celebrating [the sacrament] or communicating; namely, to avoid scandal or infamy. However, if the impediment is for a long time, such as a year, or six months (indeed, Mendoza, in Viva, prop. 3, Alex. VII, n. 6, says "for one night," but Viva does not admit even "for two days," because within such a time there is no moral danger of death), then, except for the impediment of childhood, any other impeded person should not be absolved, unless he first takes an oath that, when the impediment ceases, he will present himself to the Apostolic See as soon as possible, as is stated in c. De cætero, concerning reserved cases. If he fails to present himself, he falls again into the same excommunication, as is stated in c. Eos qui, concerning reserved cases, in 6. See Ronc. d. qu. 4, r. 14, with Mansi; and he is not excused from this obligation to present himself, even if the confessor omits to impose it upon him, since it is imposed by law. Sanch. l. 2, c. 13, n. 50. Salm. de cens. c. 2, p. 4, n. 46. It suffices that the accused present himself through a procurator. Salm. de cens. c. 2, p. 5, n. 66, with Caj. Leand. Avil. and Potest. n. 3351, who excepts the case of a cleric being struck [by lightning], for which in c. Quod de his, concerning reserved cases, the person is expressly required. 87. - But it is doubted whether, if it is clearly established that the accused has been completely reformed and has satisfied the parties, he will be excused from such a presentation? The first opinion affirms this, and this is held by Navar. Man. cap. 26, n. 26; also Avila, Cornejo, and Henr., apud Salm. dict. n. 66, who believe it to be at least externally probable. The reason is (as they say) that the goal of the Pope is nothing other than the reformation of the matter and the satisfaction of the parties; and this is inferred from c. Quamvis, concerning reserved cases, where no other reason for presentation is expressed, than that the accused should fulfill the command of satisfying.

[*Latin ed. p. 296*]

Let them approach the Apostolic See, humbly accepting the mandate imposed upon them. The second opinion, however, which is more probable, denies this, as stated in Suar., t. 1, in 3, p. d. 30, s. 3, n. 6; Sanch., Dec., l. 2, c. 13, n. 29; Laym., de cens., c. 6, num. 4; and Salm., l. c., at the end. The reason is that the person who is required to appear must only be obligated to fulfill the satisfaction of the injured party; for this obligation is inherent in natural law in every offense; but also to fulfill those things

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imposed by the Pontiff to prevent the same crime in the future, as Croia states, l. 7, n. 164, with Suar., Sanch., etc., all the more so because in the same chapter. However, it is assumed that the case concerns someone who has already made satisfaction. And in the cases of the Bulls of the Jubilee, this is expressed in the same Bull, near the end, with these words: "No one can be absolved from these censures, except by the Roman Pontiff, unless he is in the article of death, and even then, only if he stands by the mandates of the Church, and makes satisfaction (having given security)." Observe well the distinction between the obligation of standing by the mandates of the Church, and making satisfaction, that is, to the injured party. 88. - If, however, the impediment is perpetual, then those who are absolutely free from the obligation to appear; Bon., d. 1, q. 3, p. 2, n. 4; Conc., p. 445, n. 13; Cont., Tourn., de cens., part. 1, cap. 5, v. Possunt 2; Viva, de sacr. pænit., q. 9, art. 2, n. 8; Potesta, n. 3349; Ronc., d. ij, 4, f. 11. Those who are considered perpetually impeded are: I. The laity, including men, women, and those who are related, by sentence of excommunication. II. Regulars, from the chapter Monachi 2, and the chapter Cum illorum 32, §. Those, by sentence of excommunication, can be absolved by their superiors: unless there has been an enormous excess. See other things concerning this in number 280. III. The elderly, as is known from the sentence of excommunication, even though they are able to walk, as Barb. states, n. 27; then Sylv., Sayr., and Graff. By the name of old age, we mean not only those who are seventy years old, as P. Milant. says in prop. 3, Alex. VII., but also those who are eighty years old, as P. Viva probably says, l. c., according to what is said about fasting, l. 4, num. 1036. Not, however, those who are fifty years old, as Farin. says, improbably, in Barb. and others, apud Vivam. IV. Servants. V. The poor, that is, those who, due to poverty, cannot go to Rome, as is stated in the chapter Quamvis, de sent. excom. Conversely, if poverty did not prevent the journey, as happens with wandering beggars; and thus the text in the chapter Ea noscitur, eod. tit., is understood, as explained by the Gloss v. Pauperes. No one is obligated to go begging (as Potesia says), if he is not accustomed to it, as Pal. notes, p. 23, n. 48. VI. Those who are perpetually condemned, such as shipwrights or trireme builders, and similar individuals. VII. The infirm, that is, those suffering from a long and serious illness, even if not fatal, such as the quartan fever, as P. Milante says in prop. 3, condemned by Alex. VII., from Innocent III, Salm., de cens., c. 2, p. 5, n. 64, and Potesta, with Pal. Those who are ad-

[*Latin ed. p. 297*]

Those who are weak, or delicate, are not able to endure the hardships of travel. But for these individuals, unless there is danger in delay, the Pope should be consulted, as stated in chapter "Women," under sentence of excommunication VIII. Those who are bound by the care of providing for, or administering a family, or performing a public office which can-

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not be abandoned without public detriment, are exempt. This is stated by Laym., Potesta, and Palafox. Women, not only nuns, are exempt, as is certain from chapter "Concerning Nuns," 33, under sentence of excommunication, where their absolution is granted to Bishops; but all women. The reason is that, as is stated in chapter "Quamvis," under sentence of excommunication, and in chapter "Ea," in the same title, 6, women are excused from appearing in person, and no other reason is given, except that they are women. Thus, Salmeron states in "De Censuris," chapter 2, paragraph 5, number 68. Milante states in "De Proprietatibus," 3, "Contra Tournheim," in the same place, and Palafox, page 23, number 8, and Barbatus, number 30, with Navarret and Bonaventure, etc. However, it should be noted that nuns cannot be absolved by the Bishop from censure for violating the enclosure, even secretly, except in the case of mortal danger, according to the declaration of Gregory XIII, as we stated in book 6, number 593. For the Pope has reserved this power to himself, although He knew that nuns are perpetually bound by the enclosure. X. Those who are underage, whose absolution is granted by law to the Bishops in the aforementioned chapter, under sentence of excommunication. Therefore, these are exempt from the obligation to appear in person, even if they seek absolution after reaching the age of puberty, as stated by Salmeron, ibid., number 67, with the Council of Cornel and Avila, and in the aforementioned chapter, under sentence of excommunication, where the reason is given: "Because, due to the defect of age in which the offense was committed, leniency must be exercised." Avila correctly points out there that if a priest who lacks the power to absolve, absolves an underage person from a censure reserved to the Pope in a case of mortal danger, he must impose upon him the obligation to appear before the Bishop after the danger has passed. Those who are hindered are also considered exempt, such as those who live together, like soldiers, or those who reside in a seminary: therefore, these can be absolved by the Bishops from censures reserved to the Roman Pontiff, as stated by Milante in "De Proprietatibus," 3, and Barbatus, in the supplement, 44, number 16, with Navarret and Bonaventure, etc., from chapter "Quoniam," in "De Vita et Honestatibus Clericorum," where the power is granted to the Bishop to absolve those who live together, if one of them has struck the other cleric, provided that the blow was not grievous. Finally, those who are hindered are considered exempt, if they cannot undertake a journey without a serious spiritual or temporal detriment to themselves, or to others. As stated in "Quamvis," under sentence of excommunication, it is said that they are excused, or are excused by any canonical impediment. However, for those listed above to be considered perpetually hindered, it is sufficient that they have suffered from such an impediment for ten years, and according to Tambini, even for five years, and Viva agrees in "De Proprietatibus," 3, Alex. VII., number 6, and Roncaglia, in the aforementioned question, 4, response 44. However, those who have lightly struck a cleric

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can always be absolved by the Bishop, as argued in chapter "Pervenit," under sentence of excommunication. See the aforementioned notes, numbers 279 and 89. — Question V. Whether those who are hindered are obliged to go to Rome in person; if not, whether they are at least obliged to do so by letter, or through a procurator, in order to obtain absolution from the aforementioned censures. Bonaventure states in "Decretum," 1, question 3, paragraph 2, number 4 (to which Potesta adheres in "Tractatus," 1, number 3366), that, for hidden cases—

[*Latin ed. p. 298*]

It should be determined by letter to the Holy Penitentiary, when it can be done conveniently, and if no necessity prevents; for this is the purpose for which the Holy Penitentiary was established by the Pontiff. This opinion is probable, but a more probable, and common, opinion is the negative one, as stated by Ronc. d. q. 4, r. 14 (who calls this the safest opinion), Milante in prop. 3, Alexander VII, Viva ib. n. 7, Pal. d. i. p. 14, §. 5, num. 6, and Spor. p. 264, n. 750, with the common opinion, and Salm. de tēns. c. 2, p. 5, num. 65, with Con. Henr. Dic. Avil. Dian. Conin. See the aforementioned l. 6, num. 563, v. Dub. 3. The same is said by Satich. Dec. l. 4, n. 13, who distinguishes the case of heresy, and this exception is rejected by Pal. d. 4, p. 2, §. 5, with Avers. and Dic. apud Crotz l. 6, p. 2, n. 1624. The reason is, first, because, if there is an impediment preventing one from going to Rome, the power of the Bishops to absolve is restored (as we said) by the removal of the reservation in the bull; second, because (as Ronc. says in the aforementioned place), the law does not obligate the guilty party unless he personally goes to the Pope; therefore, if he cannot do this, he is not bound to go elsewhere. Furthermore (and Ronc. adds this well), to seek absolution from the Holy Penitentiary is a privilege; but privileges, being favorable, impose no obligation to use them. And so, likewise, in the case of an impediment, the guilty party can be absolved by the Bishop; even if there is an apostolic nuncio present who could easily go to the Pope, as Ronc. and Salm. hold in the aforementioned place, n. 65, with Corn. Dian. Avil. Henr. and Lugo apud Crotz l. c. (contrary to Mol. Bon. Con. etc. apud Salm. loc. cit. in fn.). Just as the nuncio, so also the Bishop can then absolve by delegation from the Pope.

90.—Question VI. In the case where a heretic is prevented from going to the Pope, can the Bishop absolve him (according to the opinion stated above in Question III), not only by himself, but also through others? We have already said above in Question II, n. 82, that outside the case of an impediment, the Bishop cannot absolve from any case reserved in the bull of Celibacy, and much less can he delegate. However, in the case of an impediment, we say with Bonde. in the bull of Celibacy d. 1, q. 22, p. 2, n. 14, Ronc. p. 81, c. 6, qu. 4, r. 2, v. Quod st, and De Alexandro Confess. Monial. o. 6, §. 8, quæst. 3, that it is very probable that the Bishop can ab-

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solve from all pontifical cases, even heresy, and delegate, not only specially in a particular case, but also generally. It does not contradict the Council of Trent in the aforementioned chapter, "It is permitted to them, not to their Vicars," because the aforementioned authors state that this comes from an ancient decree of Trent, where it was granted to the Bishops to absolve from hidden heresy even outside the case of an impediment; but when it is a question of someone prevented from going to the Pope, this power to absolve from heresy, and from other cases in the bull of Celibacy, belongs to the Bishops not by the authority of Trent, but by the authority of common law, as the Doctors commonly say, and as we have extensively demonstrated in the aforementioned Question III, n. 84, from the many texts cited there. Therefore, when...

[*Latin ed. p. 299*]

In the case of an impediment, the aforementioned faculty, by law, pertains to the Bishops; for it is attached to the episcopal office and dignity, and therefore they can generally delegate it. This is in accordance with the common doctrine of the Fathers, namely that all who have ordinary power can delegate it, as taught by Salm. tr. 41 on laws, chapter 5, page 4, paragraph 3, number 51, and tr. 47 on vows, chapter 3, page 40, number 83, with the agreement of Cont. t. 2 on laws, page 194, verse. Furthermore, Holzm. t. 4, page 98, number 485, and others throughout the work, citing l. More 5 on the jurisdiction of all judges, where it is expressly stated: "Only he who has jurisdiction by his own right (that is, by ordinary right, as the Glossary explains there) can delegate it, and not one who holds it by the benefit of another." It is certain that when a certain power is granted to a Prelate, and it is attached to his office or dignity, that power is, or at least is equivalent to, ordinary power, as taught by the aforementioned Salm. in the aforementioned work, chapter 5 on laws, page 4, paragraph 3, number 50, and Laym. l. 4, treatise 5, chapter 22, number 6, who supports this with l. 4 ff. on the office of him to whom jurisdiction is entrusted, and from chapter "Quoniam," on delegated office, 94.

Question VII: If a sin reserved is absolved by an inferior, either due to the danger of death or another impediment, but without a censure, should the burden of penance be imposed, requiring the penitent to present himself to a superior? Sanch. Dec. l. 2, chapter 13, number 24, denies this, along with Corduba, Zumbran, and Salm. de censur. c. 2, page 4, number 40, who cite Suar. in 3 p. t. 4, d. 30, s. 3, number 6, but not rightly, as we will see below. The reason given is that in this case, the sin is directly absolved, and that there is no legal basis for imposing such a burden. However, a distinction must be made: if the sin is absolved in articulo mortis or due to the danger of death, then there is no obligation to present oneself to the superior, because in that case, the sin has truly been directly absolved, and all reservation ceases, as rightly taught by Suar. in the aforementioned work, number

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6, and Salm. de pœn. c. 11, page 2, number 24, along with Palud. and Nav. where Dian. p. 5, treatise 3, rule 66, is cited with Grah. Præp. Hurl. etc. Conversely, if the sin is absolved by an inferior due to some impediment to approaching a superior, other than the danger of death, then no inferior can directly absolve from reserved matters, but only indirectly, according to the aforementioned l. 6, number 585, verse. Therefore, the penitent, in order to be directly absolved by a superior later, is absolutely obligated to approach him once he has recovered; this is the common teaching of Suar. l. c. number 8, Laym. de pœn. c. 12, number 40, along with Nav. Soto, Con. Rico, etc., and Ciera de cas. reserv. number 184, along with the common opinion, as asserted in number 92.

Question VIII: Does it impede the Bishop to hear confessions and administer censures, or other reserved matters, which could be absolved by any confessor? The common opinion is that Suar. Lug. Dec. etc., cited by Viva de pænit. qu. 9, art. 2, number 9, denies this, because this is granted by law to the Bishops, and no argument from an equal holds in positive law. However, it is probable that Hono. d.

[*Latin ed. p. 300*]

c. 6. q. 4. r. 3. Pal. d. 2. p. 44. §. 5. n. 6. Spor. p. 264. n. 750. Croix, lib. 6. p. 2. n. 1624. Cum Nav. Ab. Ang. et Tab. Salm. de cens. c. 2. p. 5. n. 93. prope finem cum Tann. Sylv. Henr. Viva, l. c. cum Perez, Hurt. Gran. Dic. Boss. et Celest. Ratio, then because, where the reason is the same, the law ought to be the same, as the Glossa says in c. Cum dilecta, de confirm. Also, because there is not lacking a law expressly granting this; for in c. Nuper 29. de sentent. excom. it is stated, as we noted above, that one who is hindered by a just cause from approaching the superior judge having the power to absolve from censure, is absolved by his own Bishop, or his own priest. But under the name of one's own priest, any confessor is understood, as noted there by the Glossa from c. ult. q. 26, and rightly, Salm. de cens. c. 3. p. 44. n. 464. infers from c. Omnis, etc. de pænit. et rem. where it is prescribed that each one should confess at least once a year to his own priest, who is commonly understood to be any confessor, as we have shown in l. 6. n. 564 and 670. Therefore, if it cannot be verified that a priest absolves the guilty from censures reserved to the Pontiff, when the Bishop can be approached, at least it should be verified when the Bishop cannot be approached, as rightly argue Roncag. and Salm. ll. cc. with Henriq. and Diana. Indeed, Pal. l. c. says, from the force of the aforementioned text, that one hindered from approaching the Pope, can be indistinctly absolved by his own priest. But I think it more probable, with Sporer p. 264. n. 764. Salm. eod. tr. c. 2. p. 5. n. 63. Ronc. l. c. and others, as above, that this should not be admitted, unless when there is no easy recourse to the Bishop; for, whether by one's own Bishop or one's own priest, the most common interpretation of the Doctors is not disjunctive, but substitutive, namely, when the Bishop cannot be

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approached. All the more so, because in c. De cætero 44. and c. Ea noscitur 43. it is expressly stated that when the Pope cannot be approached, the Bishop should be approached. It is also quite probable, with Suarex, Sanch. and Mol. as I noted in l. 6. n. 563. v. Dub. I., that in articulo sive periculo mortis, any confessor can absolve from papal sins, even in the presence of the Bishop, because then all reservation ceases. Nor do the texts cited above in chapter 44. and 43. concerning sent. excom. stand in the way. For it is probably answered by Sanch. with others, as above, that they apply only to the case of the striking of clerics, of which they are speaking, and not to others. Furthermore, I have not found any explicit text which prescribes, in articulo mortis, that the sick person should be absolved by the Bishop from censures reserved to the Pontiff. However, Sanch. l. c. with others, excepts, if the sin reserved to the Pontiff were hidden, because then, by ordinary law, the Bishop can absolve him from it, by virtue of the Tridentine Council in the laudable c. Liceat. Therefore, it is then certainly necessary to approach the Bishop, if there is recourse to him, since then the sin is reserved to him. But notwithstanding this, it seems probable to me and to others of lesser experience, even if the sin were hidden, that one can be absolved in articulo mortis by a simple confessor, even in the presence of the Bishop.

[*Latin ed. p. 301*]

For in such a danger (as We have said), all reservations concerning the sins and censures of any penitent are suspended, as taught by the Council of Trent, Session 14, Chapter 7. And I have not contradicted this in the aforementioned passage, number 563, Question 4, where I seem to have presented something to the contrary; for there the discussion concerns censures reserved by the same Bishop, and in that case, the confessor must instruct the penitent to present himself to the Bishop after he has recovered, so that he may receive the proper penance from him, as the Doctors teach, citing Salm. on Penance, Chapter 41, page 2, number 21, and Tumb. on Reserved Matters, Book 5, Chapter 10, Section 4, citing Quod de his, and Sæpe, from the Decretals, as is clearly indicated in the passage: "Eos, qui..." And there Tamb. number 4, along with Fill. Boss., and Pasqualig. on Matrimony, Alex. VII, number 8, and Vul. Nav., Bordon, etc., state that, in this sense, the confessor must require the penitent to swear to present himself to the superior as soon as he is able (but they say that a promise is sufficient for internal matters), therefore, the sick person can be absolved by the confessor in the presence of the Bishop. But when it is a question of papal censures, the sick person, once the danger has passed, should not present himself to the Bishop, but to the Pontiff; hence the reason why he cannot be absolved in the presence of the Bishop ceases to apply. Can a subdeacon or a simple cleric absolve from censures when a priest is lacking? It is more probable to deny this, according to the aforementioned passage, Book 6, number 540. But, if he has sins and reserved censures, is he obligated to

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confess them to a confessor who does not have authority over them, in the case where there is a necessity to receive Communion or to confess, and access to a superior is not available? See the aforementioned passage on the Eucharist, Book 6, number 265, Question II, where We have stated this; see the reasoning there. If someone is prevented from going to the Bishop, can a simple confessor absolve him from cases and censures reserved by the same Bishop? Rone, in his Tractates, Book 4, Chapter 6, Question 5, along with Hurtado, and Dianty, state that if the impediment is long-lasting, he can be absolved, with the obligation to appear before the superior when the impediment ceases. But if the impediment is permanent, he can be absolutely absolved. However, Laym. on Penance, Chapter 12, number 10, along with Suar., Soto, Coninch, etc., say that, in the case where there is a necessity, and the Bishop is far away, a simple confessor can directly absolve the penitent only from matters that are not reserved, and indirectly from reserved matters. 93. — Question IX. How can Bishops delegate to others the faculty granted to them in the aforementioned decree, both to dispense in irregularities, and to absolve from reserved cases that are hidden? The first opinion, held by Henriq., Menoch., and Cord., apud Sanch. on Matrimony, Book 2, Decretum 40, number 16, states that Bishops cannot generally delegate this faculty, but only specifically in a particular case that arises. The second opinion, which is more probable, and is held by Suar., Book 4, Decretum 30, is...

[*Latin ed. p. 302*]

Section 2, paragraph 9. Sanchez, in the aforementioned work, number 47. Layman, book 4, treatise 5, page 2, chapter 5, number 2, and Croia, book 7, number 435, teach that Bishops can generally grant this power, both of dispensing and of absolving, to another specifically appointed for this purpose. Suarez confirms that this is understood and interpreted according to custom, which is the best interpreter of the laws. Indeed, Sanchez himself states (ibid., number 25), as does Barbatus in the decrees of the Council of Trent, session 24, number 45, that I, myself (and Suarez clearly agrees, as seen in his aforementioned work, book 44, section 2, number 8), believe that not only someone specifically appointed, but anyone to whom the Bishop generally grants his power, can dispense in cases of irregularity and absolve from reserved suspensions. The reason is that the Council does not limit this power, as it does in the second part regarding the power of absolving from sins; therefore, since Bishops possess this power by ordinary right, they can generally delegate it, without any special appointment for these specific matters. Palatinus rightly observes (de leg., book 6, page 8, section 2, number 7) that a Bishop cannot dispense in cases of irregularity (or absolve from reserved suspensions) with foreigners, even if they have a quasi-domicile in his diocese, according to the decree of Gregory XIII, related in book 6, number 593, 94. – "Response 3. Many Religious, especially the Men-

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dicants, can" absolve "from various censures within their own forum." See Diana, page 9, volume 4, resolution 63. Therefore, they should request these privileges from their superiors when they are assigned to hear confessions, and should follow the following rules (1). 95. – Regarding the power of Regular Canons in reserved matters, a distinction must be made between the power they have with respect to secular clergy and that which they have with respect to their own subjects. And I. With respect to the secular clergy, Regular Canons were once able to absolve them from censures, both those imposed by the Pope and those reserved by Bishops, through various privileges, as mentioned by Salmeron (de sacr. pænit., chapter 43, page 3, number 54), namely those granted by Eugene IV, Urban IV, Paul III, Julius II, St. Pius V, etc. However, (as Salmeron himself testifies, ibid., and Viva in prop. 12, Alex. VII, number 4), Clement VIII, on November 26, 1602, and Paul V, on January 7, 1607, limited this power, declaring that outside of Rome, and within Italy, they could not absolve secular clergy from cases reserved by the Pope in the Bulla Cœna; nor from the other six celebrated cases, namely the striking of clerics, duels, violation of immunity, violation of the enclosure of nuns at Oulx for immoral purposes, real simony, and confidential simony in benefices (The Decree of Clement is extensively cited by P. Milante in prop. 12, Alex. VII, volume 4, page 98). Nor could they absolve from cases reserved by Ordinary Bishops. Subsequently, the Holy Congregation, by order of Urban VIII, on November 17, 1627, decreed: "Through confirmations of privileges granted to Regular Canons by the Apostolic See after the Holy Council of Trent, they are in no way..." (1) See below, number 109, and following.

[*Latin ed. p. 303*]

The privileges previously granted by the same Council, and then also abolished and extinguished by the decrees of the Congregation itself, if any such privileges existed, concerning the absolution from reserved cases; just as the absolution from the cases contained in the bull, which is customarily read on the day of the Lord's Supper, has been abolished, since the force and validity of that bull were removed by its annual publication; thus acquiring new strength and validity through subsequent confirmations of privileges. And it was added there: The faculty to absolve from other cases and censures (except for the cases mentioned in the bull of the Lord's Supper) reserved to the Apostolic See, has been very little diminished by the decrees of the same Holy Congregation on this matter, issued by order of Clement VIII, 96. — But there is doubt as to whether Regular clergy can absolve secular clergy from papal cases? The first opinion denies this, as stated by Viva in proposition 42, Alexander VII, n. 14, Bord. and Floron, from the decree of Paul V, which established: "And furthermore, that none of the aforementioned priests (that is, secular and Regular clergy) who have been granted privileges, indulgences, and faculties to absolve from

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excommunications, or from the same cases reserved to the Ordinary, or to the Apostolic See, except in articulo mortis, dare to absolve, or presume to absolve." The second opinion, however, is more probable, as held by Bonac. p. 2, n. 48, Salm. tr. 48, de privil. c. 4, p. 2, §. 40, n. 453, and Aversa, and Pell. apud Vivam l. c. n. 43 and 14, and followed by Potesta, t. 4, de min. pænit. c. 5, n. 3458, with Peyr. Donat. Rodr. Vidal, Joan. De la Croix, and even Viva himself, who retracts this, admits it in his treatise on censures, qu. 2, art. 2, n. 6 and 7, teaching that Regular clergy can absolve secular clergy from hidden papal cases; and they prove this from the privilege of the Society of Jesus (in which all Regular clergy participate, as noted by Potesta n. 3459), granted by Paul III in the year 1545. In this privilege, the words of which are quoted by Potesta there, it is granted to absolve the faithful from all sins, even those reserved to the Apostolic See, except those contained in the bull of the Lord's Supper, etc. Nor do they object, as Pell. apud Vivam, and Bon. n. 49, that the praised decree of Paul V is an obstacle. For the prohibition there made concerning the absolution of papal cases, refers to the cases reserved in the decree of Clement VIII, which Paul V and subsequently Urban VIII confirmed and renewed, as stated by Bon. Viva, etc. For there, only the cases of the bull of the Lord's Supper, and the other six mentioned, were excepted. 97. — But what Pelliz. apud Vivam, and Rodriq. apud Potesta, maintain, namely, that from the aforementioned privilege, Regular clergy can absolve even from papal cases *pro foro fori*, Potesta rightly rejects in n. 3465. For from the words of the privilege, from the hearing of confessions, and from the imposition of salutary penance, it is clear that the faculty was granted only for the internal forum.

[*Latin ed. p. 304*]

98. — Objection 2. Can Religious [orders] absolve secular [persons] from sins specifically reserved to Bishops? Suarez, Hurtado, etc., in *Salmanticenses de censuris*, chapter 2, page 4, paragraph 40, affirm this. Their reasoning is that he who can absolve from papal [penitentials] can also absolve from episcopal [penitentials]; that is, he who can absolve from those reserved by the Pope can also absolve from those reserved by the Bishop. Rodrigo, Quintilla, and Candida, in *Vivas de dispensationibus*, proposition 12, paragraph 4, also leaned towards this opinion, due to privileges granted to Religious orders subsequently, and again, by the rules themselves. They argued that the decrees of the Holy Congregation, issued under Clement VIII and Urban VIII, did not impede this, because such decrees do not have the force of law. However, despite these arguments, it must be maintained that the opposite is true, because the aforementioned decrees were confirmed by those Popes for the entire Church by their special mandate, and therefore truly have the force of law, according to the common doctrine reported in book 1, paragraph 106. Furthermore (as rightly stated by Salmanticenses in the aforementioned work, near the end, and by Vivas

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in *de dispensationibus*, question 2, article 2, paragraph 7), this opinion became highly improbable after proposition 12 was condemned by Alexander VII, which stated: "Mendicants [i.e., Religious orders] can absolve from sins reserved to Bishops, not by obtaining from the Bishops the power to do so." This single condemnation is sufficient to revoke the privileges.

99. — Objection 3. Can Regular [orders], who are privileged, absolve from censures reserved to Bishops by law, or by custom? There are two probable opinions on this matter. The first opinion denies this, and it is held by Cabassut, *Tractatus Juris*, book 4, chapter 11; the Council of Trent, *De penitentia*, page 571, paragraph 8; Milante in proposition 12, condemned by Alexander VII; and Vivas in *de dispensationibus*, proposition 12, paragraph 14, with Bordon and Floron. This is because in the decree of Paul V, the power to absolve from censures reserved to Ordinaries was taken away from Religious orders. However, the second opinion, which is more probable, affirms this, and it is held by the Council of Trent, *De censuris*, page 447, paragraph 47; Spotorno, *De penitentia*, page 264, paragraph 745; Croio, book 6, page 2, paragraph 1628; Salmanticenses, *De sacramento penitentiae*, chapter 13, page 3, paragraph 62, with Sanchez, Aversa, Lez, Pellizzari, Peyr, Dian, etc. And Vivas, in his *Tractatus de censuris*, question 2, article 2, paragraph 7, retracts his earlier statement, teaching that Religious orders can absolve from censures reserved to Bishops by common law. What these censures are can be seen below, with Busembach, paragraph 243. However, the censures which Bishops reserve for themselves must be excepted. The reasoning is that, although in the decrees of Paul V and Urban VIII, Religious orders are forbidden to absolve from sins reserved to Ordinaries, it is more accurately understood, as Salmanticenses and Aversa, Lez, and Leand, in Vivas, *de dispensationibus*, proposition 12, paragraph 43, state, that this applies only to sins reserved by Ordinaries to themselves, since these decrees (as we have said above) are confirmatory of the decree of Clement VIII, which states: "Nor from sins which Ordinaries reserve, or will reserve in the future." Note that Suarez, *De penitentia*, book 29, section 3, rightly states that sins reserved to Bishops are more properly said to be delegated to Bishops, rather than reserved by them. However, the six sins expressly mentioned in the decree issued by order of Clement VIII, as mentioned above, must always be excepted. But this must be understood within Italy, as explained by...

[*Latin ed. p. 305*]

Urban VIII (as stated above, no. 95), states that, outside of Italy, or within the city [Rome], as decreed by Clement, Regular clergy can absolve from all censures that are reserved by law to Bishops, and within Italy, Regular clergy can absolve from the censure for abortion, since this case is not among those expressly mentioned by Clement VIII. Thus, the common opinion of the Doctors. See book 4, no. 397, verse. Similarly. However, if

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the Bishop has specifically reserved this case to himself, then in no way can the Regular clergy absolve him, as we said in the aforementioned passage, at the end, and in book 6, no. 599, verse. Certainly, near the end. Regarding what Viva says in *de censuris*, question 5, article 3, no. 40, and in proposition 42, condemned by Alexander VII, along with others, namely that Regular clergy can absolve even from the six cases mentioned by Clement VIII, when they are hidden, for the same reason as stated above, because the aforementioned cases, when they are hidden, are reserved to the Bishops, not to the Pope, according to the Council of Trent, in the decree *Liceat*. This is scarcely proven: for Regular clergy can absolve from cases reserved to Bishops, or delegated, only to the extent that they themselves are also papal. Therefore, if the Regular clergy lose the power to absolve from cases as papal cases, they have no basis for using this power, whether the cases are public or hidden. However, Viva, question 2, article 2, no. 7, along with the commentators and the common opinion, to which the Council also adheres, p. 447, no. 17, states that Regular clergy can absolve cases reserved in Synods, when the Bishop does not list them in a table; because, by the very fact that he does not list them, it is considered that he intends to grant all confessors the power to absolve from them, according to the rule: "What is not expressly stated is considered omitted."

II. Regarding the power that Regular superiors have over their subjects, the Doctors commonly teach that they can absolve their subjects from all cases reserved to the Pope, except for those mentioned in the Bull *Cæna*. Thus, Salm. *de censuris*, chapter 2, p. 6, no. 70; Council, p. 444, no. 49; Viva, in proposition 4, Alexander VII, no. 6; and Potest. *de minoribus pæniis*, volume 4, no. 3372, based on various privileges, which Salm. mentions in the aforementioned passage. (Although Croiæ, book 8, no. 144, argues against this, along with the Dictionary). For, although according to the Council of Trent, in the decree *Liceat*, it is not considered that the power granted to Regular superiors is the same as that granted to Bishops, because it seems to be granted only to those who have their own diocese, since in the Council of Trent it is said, "in his own diocese"; nevertheless, there is a privilege from St. Pius V (which the Council and Salm. extensively refer to, in the aforementioned passage, p. 3, no. 33), by virtue of which Regular superiors can do the same for their brothers and nuns as Bishops can do for their subjects, according to the Council of Trent, in the decree *Liceat*. And although Mendo, in Croiæ, attempts to refute the privilege of St. Pius, nevertheless, it is authentically cited by Salm., no. 33, Viva, and the Council, which also asserts that it was confirmed along with others by Benedict XIII, in the constitution *Pretiosus*, issued in the year 1727, which is also cited by P. Milante, in proposition 3, Alexander

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VII, p. 23. Who also refers to the same Pope having con- Volume V.

[*Latin ed. p. 306*]

It has been the case that the power to absolve, even from the cases mentioned in the bull, was lacking, except for relapse into heresy, falsification of apostolic letters, and denunciation of prohibited persons to infidels; however, a general concession was granted to the Order, so that the Superior alone could grant dispensation from such irregularities (arising from homicide), provided that the homicide was not imputed and was committed within the confines of the church. In the name of Prelates, the Provincials come, and their Vicars in their absence, or others delegated by them, as Salm states in *de cen.*, chapter 2, page 6, number 80. Also, all local superiors, rectors, priors, guardians, etc., come, as Potest states in the aforementioned work, number 3379. But after these writings, I found that Clement XII, in the bull *Romanus*, on May 30, 1732, revoked all constitutions and privileges (especially those contained in the aforementioned bull, *Pretiosus*), and restored everything to its former state. Furthermore, it should be noted that when it was debated whether the revocation made by the Council of Trent of the privilege granted to Regular Canons to absolve heretics was to be understood for laypersons, and not for religious subjects, the Sacred Congregation judged that it was to be understood for all; thus, P. Ferraris states in *Bibl. verb.*, article "Absolvere," numbers 40 and 402. Regular Prelates can also absolve novices of their order from papal censures (except for the cases mentioned in the bull) incurred before entering the religious life. Thus, Salm states in *dict.*, number 80, citing Rodr. Cand., etc., by virtue of a privilege granted by Clement VII in the year 1530. However, a doubt arises: Can these Prelates also absolve novices from censures specifically reserved by Bishops? The answer is negative, according to the decree of the Sacred Congregation, published by order of Urban VIII, as mentioned above; although Jo. de la Crux contradicts this in Salm, in the aforementioned work, number 81, because (as Salm states) by such a decree, the power granted by the privilege of Clement VII regarding the absolution of cases reserved by the Pope was revoked; but not that which has been obtained by custom, such as that by which those who have the power to absolve from reservations of the Pope, can also absolve from those reserved by the Ordinary, as they testify in the same place, Suar. and Hurt. Others, in Vivam, in *d. prop.*, 12, Alex. VII., number 6, add that that decree does not have the force of law, because it was not solemnly promulgated by a special mandate of the same Pontiff for the entire Church, according to the opinion reported in number 406. However, all these arguments, from the aforementioned, do not seem to be further probable after proposition 42, condemned by Alex. VII, as mentioned above, in which the opposite appears to be sufficiently declared. Doubt 2: Can Regular Prelates absolve their religious subjects from cases reserved in the bull *Cœna*,

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and also from heresy? Regarding laypersons, proposition 4, which stated: "Regular Prelates can, in the forum of conscience, absolve," has already been condemned by Alex. VII.

[*Latin ed. p. 307*]

Indeed, any secular individuals who are secretly infected with heresy, and those who incur excommunication for that very reason. As for their subjects, there are three opinions: The first universally affirms, as do Pal. Rodr. Peyrin, etc., in Salm. de cens. c. 2, p. 6, n. 75, and this is followed and firmly defended by Potest. t. 4, p. 4, c. 5, n. 3375, concerning Villal. Donat. and others, due to the various privileges and rights that are granted there. 405. — The second opinion, held by Salm. in the aforementioned passage, n. 76 and 77, as well as by Suar., Bann., Cand., Arrag., and others, states that they cannot absolve from heresy, but they can certainly absolve from other cases of censure. The reason for this is that, although the Bull of the Holy Supper revokes all privileges granted to Regular Canons through the words, "Notwithstanding any privileges, etc., granted to any or all of any Order," nevertheless, St. Pius V extended the privilege granted to Bishops by the Council of Trent in chapter "Liceat," as mentioned above, in the same way as it is found with Bishops. As Salm. states (ibid. n. 77), "notwithstanding the aforementioned Bull," Bishops can, by virtue of that privilege, absolve their subjects, even from cases of censure that are hidden, so too can Regular Canons. However, Salm. (ibid. n. 76) excludes the crime of heresy, because, as they refer to, according to the decree of Paul V, heretics must be entirely referred to the Inquisitors. But they explain this in Tract. de sacr. pænit. c. 43, p. 3, n. 50, to apply only to places where the tribunal of the Holy Inquisition is in force; and therefore, for other places, they refer to the teaching of Suarius, who says that Regular Canons can absolve their subjects, even those who have relapsed into heresy, by the concession of Gregory XIII. 406. — The third opinion, which Viva says should be held, but which was condemned by Alexander VII and Crocia l. 6, p. 4, n. 4622, citing Sanch., Suar., Pian., and Mendo, states that they cannot absolve from any case of censure under the Bull of the Holy Supper. The reason is, first, because the decree of Urban VIII (as mentioned above) expressly declared that the Regular Canons' ability to absolve from cases of censure under the Bull of the Holy Supper was abolished through the annual publication of the Bull; and second, (as Viva rightly argues in d. prop. 4, n. 3), if even Bishops today cannot absolve from cases of censure after the proposition 3, which was condemned by Alexander VII, as we said above, n. 83, then certainly Regular Canons cannot. But today, the question is settled; for (as P. Milante refers in the aforementioned proposition 3, t. 4, p. 23, and P. Conc. t. 40, p. 449, n. 21 and 22), Benedict XIII, in the Bull "Pretiosus" (whose words we quoted in n. 401), most recently granted Superiors of the Order of St. Dominic, and through communication with other Orders, the

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ability to absolve their subjects, namely, the Brothers and monks subject to them, from any censures, even those under the Bull of the Holy Supper, with some exceptions. 407. — Question 3: Can Regular Canons absolve their subjects from censure for transgressions committed by another Religious, or by a secular cleric? We said "their subjects"; for concerning secular individuals, Regular Canons cannot.

[*Latin ed. p. 308*]

It is known that the power to absolve secular clergy from this censure was expressly taken away from them by Clement VIII and Paul V, both within Rome and within Italy; see the aforementioned number 95. In chapter 32, section 3, it is stated that, concerning excommunication, if a religious man strikes another of the same order, unless the excess is difficult and enormous (as is said there), such as if it has led to the mutilation of a limb or the shedding of blood, or if violence has been inflicted upon a bishop or abbot. However, if he strikes a religious man of another order, it is said there that he can be absolved by his own abbot and by the one who has suffered the injury. But if he strikes a secular cleric, it is said that he can only obtain the grace of absolution through the Apostolic See. The same is stated by Pal. d. 3, p. 23, § 4, n. 10, Laym. tr. 5, p. 2, c. 5, near the end, and others throughout, concerning the absolution of one who has struck another, even if he himself committed the crime before entering [the religious order], because those in novitiate are considered as religious. However, Laym. in the aforementioned passage, and Pal. there, with Mol. and Sayr., add that a novice, if he leaves before making his profession, is obligated to present himself to the Apostolic See, according to c. Eos qui, de sent. excomm. in 6, and that if he has been absolved by a prelate, because that absolution was granted due to a temporary impediment, so that he would not wander. It should be noted here 1. that if a religious man inflicts a slight injury upon a secular cleric, he can rightly be absolved by the bishop of that place, as Laym. and Pal. and others commonly say in their works, citing c. Religioso, de sent. excom. in 6. Note 2. that, according to the aforementioned authors and Salm. de cens. c. 2, p. 6, n. 69, the aforementioned applies according to common law; for, considering the privileges, religious men can rightly be absolved by their prelates, even if the striking was enormous, due to numerous privileges, which are mentioned by Pal. n. 10, at the end, Salm. in the aforementioned passage, and Ronc. p. 104, c. 2, q. 2. And these authors say that this is valid even if a religious man strikes another of a different order, or a secular cleric. Croix adds in l. 7, n. 32, with Krimer, that even if the striking was public, an abbot can be absolved by a confessor chosen by himself. Note 3. that although religious men can be absolved by their prelates due to such privileges, they can also rightly submit themselves to bishops, so that they may be absolved by them; understand that if the striking was slight, or if the enormity was hidden. And in that case, those

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who are prelates of a certain order can, on their own authority, request such an absolution from the bishops. The remaining religious men, with the permission of their prelates, unless this is unjustly denied, as taught by Sanch. Dec. lib. 2, c. 42, n. 40, and Salm. ibid. p. 5, n. 52, with Boss. Henriq. Diana, etc. 108. — From which censures can those who have received the bull of Cruciatae be absolved? See Salm. ibid. p. 7, n. 82, and Croix throughout l. 8. 109. — "Rules: The first. He who has the power to absolve from censures reserved to the bishop, cannot, by virtue of that power, absolve from censures reserved to the Pope."

[*Latin ed. p. 309*]

440. — "The second [point]: He who has the power to absolve from reserved cases." The Pope is not considered to be able to absolve from the censures of the Bull of Union, because "these are considered to be greater, and are not included in the general concession." Dian. p. 5, t. 42, res. 14.

441. — Thus, Bon. q. 3, p. 4, n. 12, and Suar., Ugol., etc., apud Salm. de cens. c. 2, p. 4, n. 41. Moreover, whenever the Pope grants the faculty to absolve from censures, it is understood to include even papal censures, otherwise nothing would be granted, because anyone approved can absolve from non-reserved cases, as Bon. n. 41, and Salm. loc. cit. state, with Nav., Azor, Cand., etc. Similarly, in a jubilee, when the faculty is granted to absolve from all reserved censures, it is understood to include those reserved to Bishops, as Croiæ l. 7, n. 432, and 149, state, with Suar. and Dic. Whether, however, when power is given to absolve from censures, both those imposed by law and those imposed by men, the censures specifically imposed by a Bishop are included? Some affirm this, as Croiæ n. 133, Avil., Henr., etc., state; others deny it, as Vasq., Hurt., etc., state. Both opinions are probable. However, the faculty granted by a Bishop to absolve from reserved cases is not understood to be granted for the sins to which a reserved censure is attached. Tamb. de cas. r. c. 9, § 1, n. 44. Otherwise, if such a concession is made by the Pope, Croiæ l. 7, n. 434. The reason is that all papal cases are primarily reserved with a censure, and because of the censure; see l. 6, n. 580.

442. — "Third: He who has the power to absolve from the censures of the Bull of Union also has the power to absolve from any papal censures, and from episcopal censures imposed by law, although some deny this with regard to excommunication incurred due to heresy, about which others more probably affirm, especially for regions for which otherwise the concession would be largely useless."

443. — When the faculty is granted to absolve from papal cases, it is not understood to include cases of the Bull of Union; because in a general concession, those things are not included which the Superior would not have granted had he been specifically asked about them, as Bon. q. 3, p. 4, n. 12, Croiæ, l. 7, n. 432, Salm. de cens. c. 2, p. 4, n. 41, state, with Suar., Cand.,

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Ugolin., etc. It is certain today that, when the faculty is granted to absolve from cases of the Bull of Union, the faculty to absolve from heresy, even hidden heresy, is not included, as decreed by Alexander VII on March 23, 1656, and most recently reaffirmed by Benedict XIV in the Bull Convocatis, issued for the jubilee of the year 1750, n. 53. However, in n. 7, he granted in the same jubilee the faculty to absolve from hidden heresy, provided that the penitent did not have an accomplice.

444. — "Fourth: Regular clergy, through their privileges, can, just as they can absolve from censures reserved by the Pope, so also absolve those engaged in duels (the same applies to similar cases) after the Constitution of Clement VIII, just as they could before it: except in Italy, outside of Rome; and this is according to the declaration of Clement himself, apud Comitolum, l. 6, mor. Re-."

[*Latin ed. p. 310*]

"In the Roman Civil Law, book 24, title 83. In Fulgentius, book 4, treatise 45, chapter 5. In Loyfennus, book 3, title 9, page 3, chapter 5, number 415. — Response 4. Also, a broad power to absolve from censures is often granted during Jubilees; in which case, it must be carefully considered what, how much, and in what manner is granted. For if the power to absolve from sins reserved to the Pope is granted, then the power to absolve from censures reserved to the Pope is also granted; because the Pope does not usually reserve sins, except for the reason of the censure attached to them." ("Furthermore, it is understood that he who can absolve from a sin reserved can also absolve from the attached censure, since the sin cannot be absolved unless the censure is first absolved. Salm., ibid., number 38, with Avila, Cand., etc.") "Moreover, an absolution granted in good faith during a Jubilee, with the intention of benefiting from it, is valid, and removes the censure; otherwise, if from the beginning the person did not intend to gain indulgences, in that case it is more probable that the absolution is not valid, and both the reserved sins and the censure must be removed anew by someone who can do so outside of the Jubilee." (See the statements on penance, book 8, number 636.)

QUESTION VI. How should absolution from a censure be given?

116. How are censures to be absolved in the external forum, and how in the internal forum?

117. Can absolution be given to someone who is absent?

118. Concerning the one who has been absolved during a Jubilee.

119. Concerning absolution given out of fear.

120. Is an absolution valid if the prescribed penance has not been fulfilled?

121. What if the power to grant absolution is given with this condition?

122. Can secular satisfaction be substituted for the prescribed penance?

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123. Is an absolution valid and licit if it is given under a condition?

124. Can absolution be given for a recurrence of the offense?

125. Is a new sin required for a recurrence?

126. Can a censure be absolved outside of confession?

127. To absolve censures, it is required: I. the fulfillment of the prescribed penance.

128. In what cases can the guilty party be absolved before fulfilling the penance?

129. It is required: II. that the guilty party make a solemn promise not to commit the offense again, if it is a very grave offense.

130. It is required: III. that the one subject to the censure request absolution.

131. More things to note. What if the guilty party is still contumacious, or unwilling, or has not requested absolution?

132. Is an absolution valid if the guilty party gives a false account?

416. — Response. This must be determined based on the nature of both the censure and any absolution. From this, regarding the manner of absolution, it is resolved: 1. That certain words are not required by the nature of the thing, but those words are sufficient...

[*Latin ed. p. 311*]

"signs, by which absolution from censure is clearly signified." (External signs are sufficient for absolution from censure, but the mere will of the judge is not enough. Suar. d. 6. sect. 9. n. 2. 5. et 6. Pal. d. 4. p. 14. §. 3. n. 4. et Salm. de cens. c. 2. p. 2. n. 14. with Cornejo, and Giball.) However, in the external forum, the form of each "episcopate" must generally be observed. In the forum of conscience, however, the following is commonly used: "I absolve you," for example, "from the bond of excommunication, suspension, etc.," which you incurred because of NN (such a cause), and (if excommunicated) "I restore you to the sacraments of the Church, and to communion with the faithful," (or if suspended) "to the execution of your orders, or offices." "In the name of the Father, etc." In a public and solemn absolution, the psalm *Miserere* is recited, and the shoulders of the penitent, having been undressed, are lightly struck with a rod for each verse (unless such ceremony is to be omitted for a just reason, especially in the case of women; then, after prayers are added, the absolution is given, and the person is brought into the church. The same procedure is generally followed in the absolution of the dead, except that the tomb is struck with a rod. Rituale Roman. 447.)

"2. One can be absolved from censure while absent." (It is certain that, just as one can be bound by censure in absentia, so too can one be absolved. De manifesta, caus. 2. qu. 4. c. Quanto, caus. 2. q. 5. However, without a pressing reason, it is not permissible to absolve an absent person, Sanch. l.

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2. c. 44. n. 14. Salm. ibid. n. 16. with Pal. Avil. Sayr. etc., who note that if absolution is obtained through a procurator, this procurator must have a special mandate from the person subject to censure to obtain absolution, so that it is clear that there has been amendment; and the procurator must fulfill what the mandating party would have to fulfill if present.) "Indeed, even against one's will; although this is generally not permitted, lest the censure be held in contempt." The reason is that, just as a penalty can be imposed on an absent and unwilling person, so too can it be removed. Turr. Dian. p. 5. t. 9. r. 10. (See below n. 434.)

"448. "He who is subject to several censures can be absolved from one, the others remaining; because there is no necessary connection between them." Therefore, if it is said, "I absolve you from all bonds, etc.," it is valid for all. Therefore, if someone who has been absolved in this way should, through an invincible sin, incur a censure, that is, excommunication, he can afterwards be absolved from that sin by anyone who has the power to do so, since the censure, for the reason of which the absolution was reserved, has been removed. (See d. n. 434. in end.)

"449. "Absolution obtained by force, or by a grave injustice caused by fear, is not valid; indeed, he who causes the fear incurs a new excommunication." (Eccl. unic. De his, quæ vi, etc. in 6. However, if the fear was not unjustly caused, namely, if absolution was obtained from...)

[*Latin ed. p. 312*]

"It is judged that he who refuses to grant absolution, even when contumacy has ceased, acts wrongly. Ronc. cap. 6, q. 6, and Cont. Tourn. de cens. part. 1, cap. 5, art. 2, Quær. 6, 420. — '5. Absolution granted by an Ordinary is not satisfaction, even if it is illicit; however, it is valid, and even one granted by a delegate, provided it is not given with the condition of satisfaction; if such satisfaction is impossible, it suffices to provide a guarantee, or to swear to fulfill it when possible. 424. — Whether an absolution from censure granted by a delegate is invalid if the party has not made satisfaction, if the delegate has been granted the power to absolve with the clause that satisfaction be made? Probably not, say Sanch. de matr. l. 3, d. 33, n. 6, Pal. d. 4, p. 54, §. 3, n. 6, Bon. q. 3, p. 9, Ronc. c. 6, q. 6, and Salm. de cens. c. 2, p. 2, n. 25. Unless it is expressly stated in the grant, there will be no absolution if this condition is not fulfilled; otherwise, when the condition is of a legal nature, it is understood to be added to remind the delegate, not to limit his power; but it is more probable that Suar. d. 7, s. 5, n. 42, Sporer Suppl. p. 279, n. 214, and Vasq. Con. Sayr. ap. Pal. l. c., and others cited in l. 6, n. 537, v. Qu. VII, are correct, as Palæus himself admits. The reason is that the aforementioned clause probably implies a true condition, as is said in a similar case in l. 6, n. 4415, near the end. All the more so, because when the Pontiffs intend only to warn of some obligation, they express it with words such as 'we urge,' 'we warn,' and the like; but when they intend something

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else, they use the absolute ablative. Nevertheless, I do not consider the first opinion to be entirely improbable, as I said, at least because of the authority of those Doctors who here do not interpret 'with satisfaction' as a condition. All agree that it is a grave sin for a confessor to absolve a censured person without satisfaction. See also other statements cited in n. 537, v. Qu. VII, 422. — It is certain that, even with the aforementioned amendment, or with satisfaction made, to the extent that it was requested, this censure is not removed without absolution, because although, when contumacy has ceased, the censure ought to be immediately removed, according to c. Cum desideres, de sent. exc., it does not follow that it is already absolved; this is clear from prop. 44, condemned by Alexander VII. As far as the forum of conscience is concerned, for the corrected person, and when his contumacy has ceased, the censures cease. 423. — '3. Absolution can be granted under the condition of a future contingent event, when it is an act of external jurisdiction, which can be conditioned. However, it is not generally advisable to absolve in this way: if the person is deserving of absolution, a condition should not be added; if he is not deserving, he should not be absolved.' (Therefore, such an absolution is illicit in itself, although it may, for some reason, be made valid, as Ronc. ib. q. 2, with Suar. Con. and Salm. de cens. c. 2, p. 4, n. 44 and 42. If someone excommunicates in this way: 'I excommunicate you, until you pay,' or if someone absolves in this way: 'I absolve you.')"

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You, if you pay within one month: upon payment, the censure is lifted, as stated by Pal. Henr. Avil. Con. Vasq., etc., with Salm., ibid., no. 13.) 124. — 7. An absolution from relapse can also be granted, that is, for a specific act, and upon the passage of a certain time, the act is repeated; also, under a certain condition, which, if not fulfilled, the censure will be revived. 125. — The question arises whether, after a censure has been lifted with a condition (e.g., if you do not pay within one month), a new fault is required for the relapse to occur? The first opinion denies this, because in such a case, the original censure remains, which has not been lifted, except under that condition. Thus, Suar. d. 7, sect. 8, no. 27; Bon. q. 3, part. 3, no. 46; also Hurt. Fill., etc., apud Salm., ibid., no. 5. However, the second opinion is more probable, as held by Ronc. c. 6, q. 2, in fine; Pal. d. 1, p. 11, §. 2, no. 10; and Cont. Tourn. de cens., part. 4, cap. 5, art. 2, in fine, and Salm. de cens., c. 2, p. 1, no. 6, with Avil. Henr. Con. Laym., etc., which teaches that a new fault is required. The reason is that the first censure cannot be said to be suspended, since a censure cannot be suspended except by the authority of the Pope, as they say (Salm., loc. cit.). Therefore, it was lifted, and therefore it cannot be revived without a new fault. And the same is said by Salm., with the aforementioned Ad., cit., no. 6, in fine, if the Pope absolves from the censure in every respect, even for relapse; because, unless otherwise

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stated, it is understood that he has absolved in the ordinary manner; otherwise, if he absolves from the censure for a certain purpose only, namely, so that the person absolved is considered capable of obtaining a benefice, etc., the censure remains in force as regards other effects. 126. — 8. It is more probable that he who has the power to absolve in the forum of conscience from a censure can also do so outside of confession, as taught by Sanch. l. 8, de matr., d. 16, Con. Dian., etc., contrary to Navar., Suar., and others (Idem is held by Salm., ibid., p. 4, no. 44, in fine, with Con. Ugol. See also l. 6, no. 593, v. Eamdem, where we said that a Bishop cannot absolve from papal cases secretly committed outside the sacrament of penance in which they are declared, according to Gregory XIII.) 427. — But for the completion of this point, the formalities required by law must be diligently remembered, so that the debt is duly paid. It is required: I. That the guilty party first satisfy the party who suffered damage as a result of the crime for which the censure was imposed, namely, theft, assault, etc.; for although an absolution given without the party being satisfied would be valid, the one granting the absolution sins gravely and is obligated to restore those damages, because he was obligated to advise him. Thus, commonly, Avil. Con. Henr. Cand., with Salm., ibid., p. 2, no. 22. However, it is sufficient if the creditor is in a distant place, if the guilty party deposits the money in a safe place, so that he can be absolved, as is well noted by Salm., ibid., no. 21, in fine, with Avila. 428. — However, in three cases, the guilty party may be absolved without satisfying the injured party. I. When the injured party remits the offense; for the satisfaction of the injured party is sufficient, and it is not necessary to satisfy the Church, as held by Salm. de cens., c. 2, p. 2, no.

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20. See book 6, number 536. Therefore, if the injured party forgives the offense committed by a cleric, either expressly or tacitly, by treating the aggressor with familiarity, he can rightly absolve him, as stated by Avila, Navarr, Sylv. apud Salmant. ibid. Secondly, when the injured party rejects a just satisfaction offered, he himself satisfies the debt. Salmant. with Cardinal, book cited, at the end, secondly. Thirdly, when the guilty party is unable to make restitution, the judge can rightly absolve him, indeed, he is obligated to do so, and can be compelled to do so, as stated by Con. apud Salmant. ibid. number 21, from chapter "Quia fronte, de appel.," because, when contumacy ceases, the guilty party must be absolved. However, the guilty party, who is not able to make full restitution, nor even partial restitution, must provide a guarantee if he is able to do so; otherwise, he must at least swear to make restitution when he is able to, as stated in chapter Odoardus, de solut. and v. Ex parte 23. de verb. signif. But see what is stated in book 6, number 537, namely, "If, however..." This applies if the guilty party is certainly a debtor; for if he has a probable reason

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in his favor, or if there is doubt, since the condition of the possessor is the better one, he cannot be obligated, except perhaps to give a sworn promise to make restitution, if there is a valid obligation. Furthermore, if the debtor is not able to make restitution immediately, except at great loss or inconvenience, he can even, with a guarantee provided, be absolved; unless the same inconvenience is suffered through his own fault, as stated by Nav. Con. Avil. with Salm. dict. number 21. See what is stated in book 4, number 701, 129. - Thirdly, it is understood that before the guilty party is absolved from censure, he should provide a sworn statement that he will not commit such a crime again, as is gathered from chapter "De cætero, et c. Ex tenore, de sent. excomm." However, this oath is only demanded from those who incur excommunication for a very grave offense, such as those who scandalously violate the Church, seriously assault clerics, are arsonists, usurers, notorious aggressors against a Bishop or Cardinal, etc. Otherwise, if the excommunication is incurred for other sins that are not so grave, and this applies both in the internal and external forum, as stated by comm. Pal. d. 1. p. 41. §. 3. n. 4. and Salm. ibid. n. 18. with Suar. Con. Hurt. Avil. Dian. Henr. etc. 130. - Thirdly, it is understood from chapter "Per tuas, de sent. exc." that the censured party should ask for absolution; there it says: "Unless he implores the grace of absolution, he should not be heard, lest he seem to despise the ecclesiastical sentence." But since the text says "should not," and not "cannot," therefore, St. Thomas rightly teaches in 3rd part, question 24, article 2, which is followed by Pal. d. 1. p. 41. §. 3. n. 9. and Con. Avila, etc. with Salm. de cens. c. 2. p. 3. n. 29, that the censured party, if he has been amended from sin, can validly be absolved even if he is repentant. 131. - From this, it should be noted: Firstly, that if the guilty party has not been amended, and has committed a sin that is continuous, such as heresy or theft, he cannot be absolved except by the one who imposed the censure; otherwise, if the sin is not continuous, such as perjury or blasphemy, as stated in Cont. Tourn. de cens. part. 1. cap. 5. art. 2. Question 2. and Salm. ibid. n. 28. Secondly, it should be noted from Rene. v. 7. q. ult. and Salm. ibid. n. 30. and there Pal. Suar.

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It is sometimes licitly granted to absolve a contumacious person who is still subject to censure, for example, for the sake of the public good, or so that the accused may more easily repent.

Note III: If the privilege is granted to the penitent, as in the Jubilee, where they are given the faculty of choosing a confessor from whom they will receive absolution, then they cannot be absolved against their will, because the use of the privilege depends on the will of the one granted the privilege; so say Palearius and Tournhem, in their commentaries, as does Avila in his Decrees, chapter 12, cited by Salmeron, ibid., number 29, with Roncaglia, in his commentary, in the same place. Conversely, if the privilege is granted in

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favor of the confessor, as are the privileges of religious orders, as Salmeron rightly notes, ibid., with Antoninus from the Order of Preachers.

Note IV: A person burdened with several censures may be absolved from one, but not from the others, because, if a person subject to censure requests absolution from only one, concealing the others, he is considered absolved only from that one, unless the Superior indicates otherwise, according to the canons "Cum pro causa" and "Cum officio," concerning excommunications. See Salmeron, ibid., number 32. However, if he concealed the others without deceit, he is judged absolved from all, unless it is clear that the one granting absolution intended otherwise. So say Salmeron, ibid., with Candida and Gibal. And this absolution is valid also for the external forum, if the one granting absolution has jurisdiction over the person concerned; but if he has jurisdiction only in the forum of conscience, or only in the sacrament of penance, then the person who has culpably omitted to confess a sin to which a reserved censure was attached, can only be absolved in the forum of conscience by anyone afterwards, as Bus explains, Salmeron, on censures, chapter 2, page 3, numbers 33 and 34, with the Decrees of Avila, Gibal, etc. The same is said there, with Covarrubias, Avila, Sylvaticus, etc., regarding general absolution, which prelates grant to their subjects during visitation. However, this is excepted, as Bonaventure, Avila, etc., state, if any censure requires satisfaction of a particular kind, because in that case, it is not presumed that the prelate intends to absolve from it against the prescription of law, and to the detriment of another. Thus, these authors, and indeed probably: but in volume 6, number 597, we have said that it is more probable, with Suarez, Sylvaticus, the Council of Trent, and others, that a penitent who has confessed to the Superior, even if he has culpably forgotten a reserved sin, does not have the reservation removed, because the reservation is imposed so that the sin may be known to the Superior, and so that due penances may be imposed, and so that he may be warned to avoid it in the future. Conversely, it should be said differently, if the privilege has been granted to the penitent himself, as in the case of the Jubilee, etc. See above, number 597, 432.

Finally, does absolution hold when it is granted for a false reason, namely, if a judge grants absolution because the accused says that he has already mended his ways, or has made satisfaction, which is not true? The answer is negative, if the principal reason is lacking; otherwise, if it is a less important reason; or if the judge is certainly aware of the falsehood, as Contenson, Tournemine, in his commentary, volume 1, chapter 6, response 2, with Suarez, Bonaventure, and Salmeron, ibid., number 35, with Palearius, Sayr, Avila, and Hebron, commonly state.

[*Latin ed. p. 316*]

CHAPTER II. ON EXCOMMUNICATION. DOUBT I. What it is, and of how many kinds? 133 What is excommunication? What is meant by that

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name, whether a greater or a lesser degree? And who are to be avoided? 133 Resolutions. 135 What is required in order that someone may be to be avoided? See the constitution of the Council of Constance, number [illegible]. 136 Concerning the first condition, that someone be explicitly excommunicated. 137 Concerning the second condition, that it be publicly announced. 138 Is it permissible to communicate with others who are under a tolerated excommunication? 139 Does one sin by inducing a tolerated excommunicated person to communicate in the Holy Mass, unless there is necessity? 140 Does the same apply to one who is under suspension, and to one who is to be avoided? 141 When is the one who strikes a cleric to be avoided? 143 Is notoriety of the act required in order to be avoided? 144 Is it sufficient that the fact be known to someone? 144 Is notoriety of the law also required? 146 Is a notorious striker, in one place, to be avoided in other places where he is not known? 148 When may it be believed that one who has been absolved is to be avoided? 433. — R ESP. Excommunication is a censure by which someone is deprived of communion with the Church. It is of two kinds: a lesser one, which deprives only of the passive use, or the reception of the sacraments; and a greater one, which is also called anathema, and in law is almost always understood by the name of excommunication (It is held in c. 4, can. 59, de sent. excomm. that by the name of excommunication, the greater is understood, not the lesser, and so A.A. ap. Croico, book 7, number 477. By anathema, however, is understood a greater excommunication, imposed with greater solemnity). It deprives one of all ecclesiastical communion, according to what is said. (It is not said to deprive one of all communion: for even one who is excommunicated communicates with the faithful, as members of one body, in many spiritual goods; but ecclesiastical communion is added, that is, concerning those goods the distribution of which belongs to the Church. See Salm. de cens., chapter 3, page 4, number 4.) This greater excommunication is itself twofold: tolerated, whom the faithful are not bound to avoid; and not tolerated, whom they are bound to avoid. Indeed, after the Council of Constance, only these are not tolerated: 1. The notorious striker of a cleric, of whom below. 2. Anyone who has been explicitly excommunicated, and especially and publicly announced. Therefore, the resolutions are: 434. — • 4. In Germania, Catholics safely communicate with those who...

[*Latin ed. p. 317*]

1. Those who are manifestly heretics, and consequently excommunicated, are not to be avoided, even though they have not been explicitly excommunicated and publicly denounced.

2. One is not bound to avoid him whom one knows to have sinned against a law, by which, even in particular, something is forbidden or commanded under the penalty of excommunication, because it is required that, after a sin has been committed, a public censure be proclaimed by an explicit

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and special sentence against the person in particular, for example, that John be denounced as excommunicated, or at least that the person be identified in such a way that there is no room for doubt, for example, "We excommunicate the dean of such a place, the magistrate." (Note here that to perform an action forbidden under a greater excommunication does not excuse one from grave guilt; Salm., ibid., n. 7, with St. Thomas, Suarez, Lez., and commentary. Note also that, if the sin is forbidden under censure for the same reason, the sinner commits only one sin; otherwise, if for a different reason, as if homicide were forbidden to a cleric out of reverence for his state. This is common with Laym., c. 5, n. 1, Pal., Avil., and Salm., ibid., n. 8.)

3. Although it may be said: "We excommunicate Peter, for example, as an incendiary, and his accomplices," only Peter is to be avoided, and not the others, even if they are notorious; because the sentence concerning them is only general, and not special against a certain person.

4. One is not bound to avoid him who has been privately denounced in a closed meeting, because this has not been done publicly; for it is required that the sentence be read, or affixed to a well-known place, for example, in the church, during a gathering, or otherwise according to the custom of the region.

435. It should be noted that formerly all excommunicated persons were to be avoided; but after the constitution of the Council of Constantiensis, which begins, "Ad evitanda" (the example of which is now not extant, but is read by St. Antoninus and Soto, and which was confirmed by Martin V. in Extravagantes, "Ad evitanda"), only those who have been explicitly excommunicated and denounced, and public assailants of clerics, are to be avoided; the words of the Constitution, as related by Salm. de cens., c. 3, p. 2, n. 40, are: "To avoid scandals... we grant that no one shall henceforth be obliged to avoid the communion of any person in the administration or reception of the sacraments, or in any other divine matters, or outside of them, under the pretext of any sentence or censure, either legal or human, generally promulgated... unless such a sentence or censure has been published or denounced in writing against a person, a college, etc., or a certain place, by a judge, or has been specially or expressly declared... Saving, if anyone has incurred a sentence for sacrilegious touching of a cleric, so notoriously that the fact cannot be concealed by any evasion, nor excused by any plea: for from the communion of that person, even if he has not been denounced, we wish to abstain, according to the canonical sanctions. But it is added:

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By this, however, we do not intend to absolve or in any way support those who are suspended, or interdicted, or prohibited [from certain sacraments], nor do we intend to encourage them in any way. Therefore, only

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those who are explicitly excommunicated, and publicly denounced, and then notorious assailants of clerics, are to be avoided. We shall discuss these individually.

436. — And concerning the first [category, those to be avoided], in order for someone to be considered to be to be avoided, according to the aforementioned decree, it is required that: I. He be explicitly excommunicated, by name, through words or undeniable signs, e.g., "I excommunicate the praetor of Salamanca," and so that he cannot be confused with another praetor: as noted by Soto, Avila, and Salm. on ecclesiastical censures, chapter 3, paragraph 2, number 15. From this, it follows that we are not bound to avoid heretics, even if it is known that they are excommunicated by law, unless they are also explicitly excommunicated and denounced. Nor does the subsequent decree of the Council of Basle, which decreed that all notoriously excommunicated persons should be avoided, present an obstacle. For it is responded, as by Turrecremata, Salm., and other Doctors, that the decrees of said council, which were issued after the schism (as this decree was issued), were revoked by Pope Eugene IV; see the aforementioned law, book 4, number 133. Response 2: that such a decree, although it may have been legitimate, was nevertheless abrogated by contrary custom of the Church; and the decree of the Council of Constance was generally received. Thus, the Doctors generally agree; see Salm., ibid., number 13. Nor does it present an obstacle to say that, at least by divine law, we are bound to avoid publicly excommunicated persons, especially heretics, from the passage in Titus 3: "After two warnings, avoid a heretical man." And from the Epistle of 2 John: "Do not receive him into your house, nor greet him." It is responded that this precept is to be understood when there is a danger that we might be harmed by him, or if there is a scandal, or if there is hope that the offender might be reformed by being avoided. Salm., ibid., number 14.

437. — Requirement II: that the guilty party, who is publicly excommunicated, should also be publicly denounced. Regarding this, it is not sufficient if the denunciation is made before those who are litigating, but it must be made in a public place (e.g., in the church, during Mass, or at a gathering), and affixed in writing in a public place, or elsewhere according to the custom of the region. Pal., Disputations, part 2, book 4. Salm., ibid., number 15, in fine. Croix, book 7, number 185, with Suar., Henr., Con., Avila, Hurt. And in cases of doubt as to whether someone has been sufficiently denounced as excommunicated, we are not bound to avoid him, as noted by Croix, number 486, with Dic. and others, unless there is a danger of scandal. However, it is sufficient for us to be bound to avoid him if it is established to us that he has been denounced through public notoriety, or through the testimony of even one person of grave authority, as Croix notes, ibid., with Nav., Die., etc. It should be noted that II: an excommunicated person, by law (unless the crime is notorious), should first be summoned

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by his own superior, so that he may defend himself; Salm., on ecclesiastical censures, chapter 3, paragraph 2, number 16, according to what was stated above, number 55, in fine. And then he must be publicly excommunicated, as follows:

[*Latin ed. p. 319*]

It is sufficient to declare that a person is excommunicated "by right" as such, so that he may already be avoided; Salm. ibid. n. 45. However, it is not sufficient if the accused is merely declared guilty of a crime to which excommunication is attached, as others maintain; Suar., Sayr., Avil., etc., apud Salm. ibid. n. 47. Rather, it is necessary that it be expressly declared that the person is excommunicated, as befits; Sanch. Dec. l. 2, c. 9, n. 4; Pal. n. 6; Ronc. p. 84, q. 2, r. 1; and Salm. dict. n. 47, with Bon. Reg. Dian. etc. (which Croia considers probable, l. 7, n. 183). The reason is that in the decree of the Council of Constance and in Extravagant I of John V, it is stated that no one should be avoided unless such censure or sentence has been publicly published or specially and expressly declared by a judge. From these words, Gibal., with Sanch., adds that it is not sufficient if it is declared that the accused has incurred all the censures attached to the crime, unless he is specifically declared to be excommunicated.

Note III: Although we are not obliged to avoid an excommunicated person who has not been declared as such, we can nevertheless avoid him, even publicly, if he is publicly known to be excommunicated, as Avil. and Dic. correctly state, apud Croia l. 7, n. 184, 438.

Note IV: It is permitted for others to communicate with a tolerated excommunicated person; nevertheless, as is clear from the words of the Council, as mentioned above, it is forbidden for anyone, even a secretly excommunicated person, to communicate with others, both in spiritual and temporal matters. But here arises a doubt: is it permissible for the faithful to communicate with him in spiritual matters, and without necessity? I said "in spiritual matters"; for in temporal matters, it is always certain that it is permissible. I also said "without necessity," because in a case of necessity, or of special utility, for example, if no one else equally useful can be found, it is permissible for anyone to request sacraments from an excommunicated person; so Suar. d. 11, sect. 4, n. 45; Pal. d. 2, p. 5, n. 3; and Salm. de cens. c. 3, p. 2, n. 23, with Con. and Cornejo, 439.

Therefore, is it permissible to communicate in spiritual matters with a tolerated excommunicated person without necessity or utility? Pont. l. 5, c. 48, §. 9; Suar. d. 4, sect. 4, n. 40; and Avila, Pal., and Con., apud Salm. ibid. n. 24, deny this, because, although the person communicating does not act against the precept of the censure, he does act against charity, by leading the excommunicated person to an illicit act; unless, that is, he were prepared to administer the sacraments, or unless he were obliged to administer them by virtue of his office, namely, if he were a parish priest, because

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in that case, he is exercising his own right. However, it is more probable that everyone affirms this, namely, Sanch. de matr. l. 7, d. 9, n. 8; Pal. d. 2, p. 5, n. 5; Bon. p. 4, §. 3, n. 4; and Salm. ibid. n. 25, with Soto, Hurt., Sayr., Corn., Gibal., Henr., etc. The reason is that, when an excommunicated person is asked to communicate, e.g., to administer sacraments, he himself does not then sin; for if he were still sinning, the concession made to the faithful by the Council would be useless, since, at least indirectly, communication would be forbidden to them by reason of charity. Therefore, since communication with the excommunicated is universally granted to the faithful, an indulgence is also indirectly granted to excommunicated persons to request communication from the faithful.

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tibus communicare. However, this does not apply if the sacraments are requested by an excommunicated person, because, if requested from a minister who is himself in mortal sin, a just cause is indeed required for the request to be licit, according to the words in l. 6, n. 88, v. Resp. 3, p. 440. Note: What has been said so far regarding the excommunicated also applies to those who are suspended or interdicted, in those matters in which the force of the suspension or interdict prohibits them from receiving the sacraments; thus, as long as they have not been publicly denounced, we can communicate with them without scruple, because the Council speaks universally of any censure. Pal. p. 5, n. 8, and Salmant. de cens. c. 3, p. 2, n. 21, as well as Sayr., Caj., Gutt., etc., commun. And the same is asserted by Avila de irregulari, who states that if one is not denounced, he is not to be avoided; hence, it is licit for the faithful to request Mass and the sacraments from an irregular priest, even for public homicide, but if he has not been denounced, because the Council speaks both of those impeded by censure, as well as by any other sentence, through the words "tò cujuscumque sententiæ, vel censuræ." 441. Regarding those who assault clerics, in order for them to be avoided, it is necessary that they be notorious. But the question arises, whether notoriety of law or of fact is required? Notoriety of law is said to exist when it is known either through a judgment of a judge, or through a confession of the fact in court, or through sufficient judicial testimony. Notoriety of fact, on the other hand, is said to exist when it is known to the majority of a college, monastery, neighborhood, or a large number of people, or when it is believed to be soon coming to their knowledge; for as Salm. ibid. n. 49, with Bon., Hurt., Nav., rightly notes, in a large city, it is not required that the fact be known to the majority of the citizens; but it is not sufficient that 14 witnesses know it, as Salm. l. c. with Ad. states. Although Dic. apud Croiæ l. 7, n. 182, believes that if the assault is committed in a public forum in the presence of seven people, it should be considered notorious; otherwise, if it is committed in a privata, or in a monastery, see the words in l. 4, n. 975. However, a common reputation arising from men

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of good reputation and integrity, and thoroughly proven, is sufficient; this indeed already provides moral certainty, as Pal. d. 2, p. 4, n. 8, Bon. d. 2, q. 2, pari. 1, §. 1, n. 9, Salm. cit. n. 49, in fin. with Sayr. and others, state. However, Viva q. 3, a. 2, n. 5, Avila, and Dic. apud Croiæ l. 7, n. 187, believe that it is not sufficient to have a reputation that someone has been assaulted, but that a reputation is also required that he was publicly assaulted. Indeed, Suar. Mol. and Dic. ib. teach that a public reputation of this kind is not sufficient, when it does not proceed from the notoriety of the fact by eyewitnesses: otherwise, it will be said to be a scandalous crime, but not a notorious one, and Croiæ considers this to be probable from the words of the bull, Ad evitanda, as above n. 435, where it says: "If a sentence issued by the Council has become so notorious that the fact cannot be concealed by any tergiversation." Hence, as Viva says in the aforementioned passage, the one who assaults a cleric will not be notorious, if he merely suffers a public infamy for having assaulted a cleric, if in truth he did not publicly assault him.

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142. — It is questioned whether it suffices, for one to be avoided, that the offense against a cleric is known by law alone. Response: Negatively, in general; for although, before the Council of Constance, the mere knowledge of the law was sufficient, because then every excommunicated person was to be avoided, now the notoriety of the fact itself is also required, from those words: "That which cannot be concealed by any evasion." Thus Suarez, d. 9, sect. 2, n. 44; Palafox, d. 2, p. 4, n. 7; Bona, d. 2, p. 4, § 1, n. 3; Croix, l. 7, n. 180, with Laym and Salm, de cens., c. 3, p. 2, n. 48, with Conc. Avila, etc. It must be noted, however, that just as he who is publicly known to have been an assailant of a cleric must be avoided, as stated above, so too must he be avoided who has been declared to be avoided by a judgment of a judge (according to the Council of Constance), because in such a case, we are sufficiently certain of the notoriety of the fact itself; see Croix, loc. cit.

143. — But it is questioned: Whether it suffices that the offense has become known to one person, even if it is hidden from others, in order that he be obligated to avoid the assailant? Suarez and others affirm this, as cited by Croix, lib. 7, n. 479, because the offense is already notoriously known to him. But it is more probable that Bona, d. 2, q. 2, p. 1, § 1, with Avila, and Palafox, l. 2, n. 6, with Navar, Laym, Hurt, and Croix, ibid., with Pignat, deny this. Because, from the words soon to be quoted, it clearly appears that it is required that the offense be simply notorious, that is, known to many, so that it cannot be concealed.

144. — It is questioned: Whether, beyond the notoriety of the offense, in order for the assailant to be avoided, the notoriety of the law is required, that is, that the accused has also confessed in court, or has been condemned by sentence? It has been considered entirely to be denied in the case where

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the offense cannot be concealed by any evasion, as stated above; but it is probably affirmed by Avila, Calestani, Fagius, Covarrubias, whom Salm follows, ibid., dict. n. 48 and 49, and Roncaglia, p. 84, q. 2, r. 2. The reason is that the text (see n. 435) states that, for the obligation to avoid the assailant, it is required that it be established, not only that he struck, but also that he incurred a censure, so that the offense cannot be concealed, nor can it be excused by any mitigating circumstance. Therefore, as long as the accused has not confessed in court, or been condemned, he can always be excused by some mitigating circumstance, by saying, for example, that he struck in self-defense, that he was drunk, that he was ignorant of the censure, etc. This opinion is held by Diana, p. 5, tr. 9, res. 60, who says: "Therefore, it rarely happens that the assault on a cleric is so notorious by fact that it cannot be excused by some remedy of law, or by some probability." And the same is taught by Viva, quaest. 3, art. 2, n. 5, and Pignat, apud Croix, lib. 7, n. 481. Therefore, unless it is established by fact that the assailant knowingly intended to incur a censure, he is never probably to be avoided.

145. — It is questioned: Whether an assailant of a cleric who is notorious in one place is to be avoided in another, where he is not notorious? Hurtado, Bona, and Vasquez affirm this, as cited by Salm, de cens., c. 3, p. 2, n. 20, because it was universally declared by the Council—

[*Latin ed. p. 322*]

It is considered as something to be avoided, since it was notorious elsewhere that he was a persecutor of clerics. However, it is probable that they deny this (Pal. n. 9; Sanch. Dec. l. 2, c. 12; and Salm. ibid.). For, as they say, an action that is public in one place is not necessarily public in another, and communicating with an excommunicated person secretly does not cause scandal, which the Council especially wished to avoid. And the same thing that is said about a persecutor of clerics, should be said about an excommunicated person who has been denounced in one place, provided that knowledge of the denunciation has not yet reached that other place, as stated above (n. 78, 446).

Finally, it should be noted that, once it is known that someone has been denounced or declared excommunicated, we are obligated to avoid him, until it is known to us that he has been absolved, either through public reputation, or at least through the testimony of one person worthy of belief, as is stated in Can. Sicut 39, de sent. exc. However, faith may be given to the excommunicated person himself, if he is otherwise worthy of belief, and if, with a contrite conscience, he asserts that he has received absolution, or if he behaves as if he were absolved. Thus, Croico, l. 7, n. 488, with Nav. Avil. Die et Henr. DUBIUM II.

What is the reason for incurring a minor excommunication? 147

What is the reason for incurring a minor excommunication? 148

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Can a Bishop deny the sacraments to someone?

The direct effect of a minor excommunication is the deprivation of the ability to receive the sacraments. 149

Is there also a deprivation of the ability to administer the sacraments? 150

The indirect effect is the deprivation of the right to passive election to benefices. 151

Is it incurred by communicating with someone while avoiding him? 152

Is it a mortal sin to receive the sacraments from someone under a minor excommunication? Is it to administer them? 153

Is it incurred by a venial sin? 154

And can this venial sin be omitted in confession? 155

Who can absolve from it? Can anyone who can absolve from venial sins? 156

Who incurs it, remissively? 147.

R. SP. It is incurred for only one reason, if someone communicates with a person under a major excommunication in cases in which it is not permitted. The effect of this is the deprivation of the reception of the sacraments. See Laym. l. 1, t. 5, p. 2, c. 3. 148.

Regarding the reason, a minor excommunication is incurred by law only for communicating with someone while avoiding him. However, this does not prevent, as Laym. l. 1, t. 5, p. 2, c. 3, n. 5, teaches, a Bishop from denying a specific person the passive use of the sacraments, or at least communion, as a penalty for some crime. Regarding the effect, a minor excommunication has only one effect.

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It is held that, namely, it deprives [the individual] of the reception of the sacraments. For if he celebrates [Mass], he is excommunicated. But it is gravely sinful for one who, being subject to this excommunication, receives any sacrament, as is commonly held by Doctors. See Salm. de cens. c. 3, p. 14, n. 159, 149. — But there is a great doubt as to whether he sins gravely by administering the sacraments. It is commonly held among Doctors (contrary to Vasquez) that he does not gravely sin, because in the decree, "If he celebrates," after it is stated that the priest gravely sins if he receives the sacraments, it is added: "But he sins by conferring the sacraments, but he does not say gravely." Therefore, it is probable that Pal. d. 2, p. 21, n. 8, Sayr. Con. et Avil. apud Salm. ibid. n. 160, at least hold that he sins venially. However, Bon. d. 2, q. 3, n. 4, and Nav. Sayr. Vill. and many others apud Croix l. 7, n. 190, with Bus. in this place, n. 3, and Salm. ibid. n. 164, hold that he does not even venially sin, because nowhere is it found that he is forbidden from administering [the sacraments], but only from receiving them; indeed, it is expressly stated in the cited text: "Since he is not considered removed

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from the conferring, but from the participation of the sacraments." But when it is said there that he sins by conferring [the sacraments], it must be understood (according to the cited Doctors) that this is when the minister must, in order to confer a certain sacrament, first receive another sacrament, namely, when the Bishop confers holy orders, or when the priest dispenses Communion at Mass, it is necessary for him first to celebrate and to receive the Eucharist, of which case the text speaks specifically, and then certainly he sins, indeed gravely. Both opinions are sufficiently probable. 150. — The minor excommunication also has another indirect effect, namely, the deprivation of passive election to benefices, as is stated in the same decree, "If he celebrates." For he who is directly deprived of the reception of the sacraments is also indirectly prohibited from receiving benefices, which, according to the institution of the Church, are ordered for the reception of orders, and for the celebration of Mass. And although the text speaks only of reception by election, nevertheless, the Doctors commonly understand it also of reception by collation and presentation, both because the same reason applies, and because collation and presentation are a kind of virtual election. Therefore, he who, being excommunicated, receives a benefice, as well as those who elect, present, and confer [him], gravely sin, because they transgress the precept of the Church in a serious matter. Thus Laym. lib. 4, tr. 5, p. 2, c. 3, n. 5, Pal. d. 2, p. 21, n. 43, Bon. disp. 2, q. 3, n. 7, Croix l. 7, n. 194, Salm. de cens. c. 3, p. 14, n. 162, with Suar. Avil. Sayr. Hurt. Henr. and the common opinion. Such an election, etc., is not invalid *per se*, but must be declared invalid, as is read in the same text, where it is stated: "If one elected is knowingly excommunicated, his election must be declared invalid." There is doubt as to whose knowledge is required in order for the election to be declared invalid. There are three opinions: The first teaches that only the knowledge of the elected is required, who must know of his own excommunication and his inability to hold the benefice; thus Pal.

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d. 2. p. 24. n. 49. Layman, loc. cit., citing the Gloss on d. c. under the word "Scienter" (Knowingly), which states that it suffices if the elected one knowingly communicates with excommunicated persons. Palafox and Layman follow Croia, l. 7. n. 495, who says that it is at least required that the elected one be aware of his own excommunication when the benefit is conferred upon him; for otherwise, just as a person who is ignorant is nevertheless capable of receiving the sacraments, so too he is capable of receiving benefits. And this seems to me more probable, because the word "Scienter" (Knowingly) more truly refers to the elected one than to the excommunicated. The second opinion requires knowledge on the part of the electors, as Avila and Sylvestri state in Layman, loc. cit., and Bonaventure and Hurtado, Reg. apud Salm, ibid. n. 163, maintain. From these opinions, Salm concludes that the third opinion is indeed probable, namely, that both

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knowledge of the excommunication on the part of the electors and knowledge of the impediment on the part of the elected are required. However, electors who knowingly confer a benefit upon an excommunicated person incur no penalty. Salm, loc. cit., at the end; Avila, Dianae, etc., 154.

— "4. When laws state that one who communicates with an excommunicated person incurs a similar excommunication, the meaning is that, similarly, that is, he is truly excommunicated, although with a lesser excommunication."

2. "Because of the communication with an excommunicated person, even if it is a lesser excommunication, no censure is incurred." 452.

— "3. Although an excommunicated person, upon receiving some sacrament with a lesser excommunication, does not incur irregularity, he nevertheless sins gravely; but when administering [sacraments], it is probable that he does not even sin venially." (See statements n. 149.) 453.

— "4. This censure is incurred even if someone sins venially because of the lightness of the matter, e.g., by conversing with a specifically excommunicated person when it is not permitted; otherwise, if it is venial because of an imperfect use of reason, because the penalty is imposed for an act which, as far as it goes, is sufficient for a mortal sin." 454.

— "5. Although a venial sin can be omitted in confession, that sin to which this censure is attached cannot be omitted, lest the sacrament be received in it. Therefore, confessors ordinarily first absolve the faithful from every bond of excommunication, even a lesser one, and then from their sins." 455.

— "6. A parish priest, and anyone who can absolve from mortal sins, can absolve from this excommunication, since it is not reserved. Whether, however, one who can absolve from a venial sin with this excommunication attached can also absolve from the excommunication itself, some affirm, such as Navar and Tolet," and others more probably deny, such as Suarez and Coninck, because, just as this absolution is distinct from the sacramental one, so too it requires a distinct jurisdiction, which is never granted to all priests. See Layman, "l. 4. t. 2. p. 2. c. 3." 456.

— "How, and when, is this lesser excommunication incurred?"

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Nor does it avoid communion with an excommunicated person? See following, number 468. DOUBT III. What effects does major excommunication have? 17 What are the mediate effects of major excommunication? I. Irregularity due to the disruption of order. II. Suspicion of heresy, if the offense persists for a year. 138 What are the immediate effects? I. Deprivation of the licit, and even the valid, reception of the sacraments for the purpose of penance. 159 Is an excommunicated person, without fault, validly absolved before the censure is lifted? 160 Several points to note. 161 Is an

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excommunicated person bound to endure the impediment of excommunication in order to fulfill precepts? 163 II. Deprivation of ecclesiastical rights and privileges. 163 Can sacrifices, etc., be offered in the name of the Church for an excommunicated person in order to avoid the excommunication? 164 Can they be offered for a tolerated excommunicated person? 165 III. Deprivation of the administration of the sacraments. Do the faithful sin without cause by receiving the sacraments from a tolerated excommunicated person? 166 Can a tolerated excommunicated person validly administer the sacraments? 167 Can he administer the sacrament of penance? 168 What if he is tolerated? And what in articulo mortis (at the point of death)? 169 Can an excommunicated person licitly administer the sacraments? 170 When is he also to be avoided? 171 What penalty does an excommunicated person incur by illicitly administering the sacraments? Does a tolerated excommunicated person incur irregularity by administering penance? 172 What penalty does one incur by receiving the sacraments without necessity, due to the excommunication? 173 IV. Deprivation of ecclesiastical offices. How does one sin by participating in divine services with an excommunicated person? And is it permissible to recite the Divine Office privately with him? 174 Is it permissible for an excommunicated person to use sacramental objects, and to pray privately in the church? 175 What if he wishes to attend Mass, etc.? 176 What are the obligations of clerics if an excommunicated person refuses to leave? Do other attendees sin mortally? And do they incur a lesser excommunication? 177 What pertains to ecclesiastical offices? Can an excommunicated person give a sermon, a reading, etc.? How should he be expelled? Should the Mass be interrupted? And even if the canon has begun? 178 Is an excommunicated person bound to be present at certain hours? And does he ever sin by saying, "The Lord be with you"? Does he sin by reciting the Divine Office privately with another? 179 V. Nullity of the collation of a benefice, presentation, etc. 180 Several points to note, and is the same to be said of the collation of dignities, etc.? What if he had been presented for the benefice before the excommunication? And does the beneficiary enjoy the fruits of his benefice? 181 Is a tolerated excommunicated person incapable of holding benefices, offices, etc.? 182 Is the collation of a benefice valid to someone who is unaware that he is excommunicated? 183 Is an excommunicated person deprived of the fruits of his benefice before a sentence is passed? 184 VI. Deprivation of legal recourse. Can he defend himself in court? Can he bring a lawsuit? Can he testify? Can he defend others? 185 VII. Deprivation of the use of jurisdiction. 186 VIII. Deprivation of ecclesiastical burial. See above for further notes regarding the pollution of the Church, or the cemetery, regarding exhumation, those who accompany, those who bury, etc. 187 What if he is a heretic who has

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not been denounced? 188 IX. Deprivation of civil communion.

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189 I. Or. (Oration)

190 II. Orare (To pray)

191 III. Vale (Farewell)

192 Is it permissible to use signs of urban life without words?

193 Is it permissible to greet and write to someone who is excommunicated?

194 IV. Communio (Communion), that is, to contract, to lie with, to have intercourse, etc.

195 V. Mensa (Table). What if it happens by chance?

196 What sin is it to communicate (have intercourse) while avoiding (one's spouse)?

197 Does one sin gravely by communicating (having intercourse) I. In spiritual matters? II. In the same crime (adultery)?

198 Is it a mortal sin to communicate (have intercourse) frequently while avoiding (one's spouse)?

199 In what cases does a person who communicates (has intercourse) while avoiding (their spouse) incur a major excommunication?

200 In what cases is it permissible to communicate (have intercourse) while avoiding (one's spouse)?

457. — R ESP. (Response). It has two kinds, mediate and immediate. The mediate, or remote, are these: I. The irregularity that an excommunicated person incurs by exercising an act pertaining to some order. II. If an excommunicated person persists in his excommunication for an entire year, and, as the laws say, becomes hardened, he becomes suspected of heresy, and against him, as such, proceedings can be taken; Council of Trent, Session 25, chapter 3. Therefore, if he has committed a grave crime worthy of deprivation of benefits, he should be deprived of benefits; indeed, even if the crime is not so grave, if he is cited to purge the suspicion of heresy, he ought to be deprived of benefits as a heretic. Bonaventure, d. 2, q. 2, p. ult., citing Rebuffini, Dionysius, Navarre, etc. (To become hardened is to, for an entire year, persevere with a stubborn mind and with contempt for the authority of the Church in the same excommunication, or in some other censure, as Croix says, l. 7, n. 287, and proves from Council of Trent, Session 25, chapter 3.)

458. — The immediate effects are the following: I. Deprivation of the reception and passive use of the sacraments; therefore, no one who is excommunicated, whether tolerated or not, can licitly receive them under a mortal sin; unless excused by invincible ignorance, fear of death, infamy, loss of property, etc., because the censure does not bind with such rigor.

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Layman, l. 4, t. 5, p. 2, c. 2. (And so teach Bonaventure, d. 2, p. 4, §. 4, n. 4, and Salmeron, de cens., c. 3, p. 4, n. 43, citing Fillon, Dionysius, Concina, etc., unless it is done in view of the censure.) I said "licitly," because he validly receives all things, at least as far as substance is concerned, except penance, indeed even this, if there is excusable ignorance: provided that the other things essential to the sacrament are not lacking; because by the censure, one does not become incapable of absolution, although he is forbidden to receive it before being absolved from the censure. Bonaventure, d. 2, q. 2, p. 2, citing Fillion, Suarez, Concina. Moreover, even if the excommunication is reserved, or if the confessor knows that the sins have an attached excommunication, he may nevertheless absolve, teaching Dionysius, p. 3, t. 4, r. 78, citing Concina, Suarez, etc., and p. 5, t. 9, r. 53.

[*Latin ed. p. 327*]

459. — There are two opinions on this point: Some deny that an excommunicated person, who receives the sacrament of penance without guilt before the censure is lifted, validly receives it. Thus, Vasquez, Sylv., Hurtado, etc., as cited by Salm in *de censuris*, chapter 3, page 4, number 46. Their reasoning is that, like a severed member, he is excluded from all communion with the Church, so that he cannot participate in its benefits. However, the opposite opinion is considered more correct, as stated by Suarez, *d. 10*, section 3, number 9; Paleario, *d. 2*, page 7, number 4; Bona, *p. 2*, § 1, number 1; Croxat, *l. 7*, number 491; Salm, *ibid*, number 47; and the Council of Cajeta, Sayr, Dian, Fill, and the common opinion. The strongest reason is that the Church does not invalidate the sacrament of penance, neither by the minister removing his power when the censure is imposed; nor by the penitent, since this is nowhere established; nor can the Church sanction such a thing, since the Church cannot directly render those who are, by divine law, capable, incapable of receiving the sacrament. See the statements in *l. 6* on the Eucharist, number 265, question III.

460. — It should be noted, first, that the minister who confers the sacrament to a tolerated excommunicated person would indeed sin against divine law by giving the sacrament to an unworthy person; but he would not sin against the precept of the Church, because, as stated above, the Council of Constance permitted everyone to receive communion, even with a tolerated offense, thus, it is more probable, as stated by Suarez, *d. 10*, section 2, number 9; Paleario, *d. 2*, page 7, number 4; and Salm, *ibid*, number 51, with the common opinion of Vasquez. From this, Salm infers that if an excommunicated person, with blameless ignorance and otherwise properly disposed, requests the sacraments, the minister can lawfully administer them to him, leaving him in his good faith. Second, it should be noted that an excommunicated person, if he receives the sacrament of orders, remains suspended, according to *c. 32* of the same. Whether an excommunicated person receiving the order incurs irregularity? See the statements in *l. 6*

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on orders, number 799. Whether, if he receives other sacraments, he sins gravely, but incurs no penalty; Croxat, *l. 7*, number 498, with Diccionario and Salm, see the aforementioned. Third, it should be noted that in articulo mortis, it is more probable that the sacrament should be administered to an excommunicated person, avoiding the Eucharist, even if he has not received the sacrament of penance, as stated by Croxat, with Suarez and Diccionario, against Aviles, etc., because the civil law regarding the taking of the Viaticum is more binding than the general prohibition of the Church not to take the Eucharist. Croxat states the same in the aforementioned, citing Suarez and Dicast. But it is more probable that Aviles, etc., deny this, *ibid*, according to the statements in *l. 6*, number 88, unless the sick person cannot receive another sacrament. Fourth, it should be noted that in doubt, whether someone is absolved or not from excommunication, it should not be denied to him the sacrament, if he requests it, especially if he asserts that he is absolved; because no one is presumed to be guilty; thus, Suarez, *d. 10*, section 2, number 12; Council, *p. 2*, § 12, number 2; Paleario, *d. 2*, page 7, number 7; Croxat, *l. 7*, number 499; and Salm, *de censuris*, chapter 3, page 4, number 49, with Navarrus, Council, 464.

It is asked here, whether an excommunicated person is obligated to remove an impediment.

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The question arises whether the censure of excommunication extends to the fulfillment of the precept of Mass, or of annual confession, and of Holy Communion? Generally, Doctors of the Church hold that it does not apply to the Mass, even if one is negligent in obtaining absolution, unless this is done with the intention of excusing oneself from the obligation to hear Mass; thus, Bus. Bonac. q. 2. p. 3. §. 1. n. 4, and Salm. ibid. p. 6. n. 74, and de sac. mis. c. 6. p. 5. n. 53, along with Sa, Nav, Az, Con. and others, against a few. However, they say that it does apply to annual confession and Holy Communion, since these are divine precepts concerning which we are bound to remove impediments. Thus, Salm. de cens. dict. n. 74, in fin.; Croix l. 4. n. 197; Tamb. de Comm. c. 4. n. 44. See also the aforementioned l. 6. de Euch. n. 299, and de pænit. n. 663, 162.

II. Private individuals, at least those who are not publicly notorious, can, through the common prayers and suffrages of the Church, and through the fruit of indulgences, offer help, but not those who are publicly notorious. Therefore, not only any private individual, but even a priest, can, as a private person, pray for the excommunicated, even in public prayers and in the sacred liturgy; indeed, he can offer the action of sacrifice, insofar as it depends on the private merit of the one performing it, or he can remember him in the Memento in the private Mass. (This is certain with S. Th. Sot. Pal. Salm. ibid. p. 5. n. 58, etc., according to the commentators.)

I said, "as a private person," because, as a minister of the Church, he can-

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not. Therefore, all prayers offered for the excommunicated, in the person of the Church intervening for him, to God, are invalid and of no effect; and thus, he is deprived of all those graces which God would have been willing to grant to the Church.

463. — But two questions arise here. The first is: Can the sacrifices, suffrages, and prayers of the Church be offered for an excommunicated person in order to avoid [the censure], even if he is in a state of grace, and even if this does not prevent his absolution? Navarr, Henr, Sayr, Avil, and others, according to Salm. de cens. c. 3. p. 5. n. 55, affirm this, considering it probable; because it is not presumed that the Church wishes to deprive a friend of God of its benefits, nor to do so more than is necessary for the contumacious. However, Croix l. 7. n. 205, and Suar. Dian. Sot. Con. etc., along with Salm. ibid. n. 56, deny this, considering it less probable. And it seems clear from c. A nobis 28, de sent. excom., where it is said that the excommunicated, even though he is believed to have been absolved before God, is still to be considered as not absolved by the Church. The reason is that the Church rightly wants the bond imposed by it to be removed only if it is removed by absolution from the Church itself.

464. — Question II: Can sacrifices, etc., be offered for an excommunicated person who is merely tolerated [i.e., not publicly notorious], even in the name of the Church? There are two probable opinions on this. The first denies it, according to bellar. l. 2. de missa c. 6, Suar. d. 9. sect. 2. n. 47, as well as Sotus, Avil, Bon. etc., according to Salm. ibid. n. 59. Because the concession to communicate was granted by the Council solely for the benefit of the faithful.

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"...not of the excommunicated, but of those who are merely censured. But this opinion is no less probable. The second opinion, held by Nav. c. 27, n. 36; Pal. d. 2, p. 6, n. 10; and the Councils of Regensburg, Hurt, and Dian, etc., with Salm. ibid. n. 60. The reason is that laws favorable to others are to be understood with all possible breadth; therefore, since it has been granted to the faithful to communicate with those who are merely censured, it has also been granted to offer public prayers for them; for to communicate also implies this, as is stated in c. 28 and c. 38 concerning censure. All the more so, because by ancient law, public suffrage was not permitted for those who were secretly excommunicated, as can be gathered from c. Cum non ab homine, ibid.; and Suarez himself admits that offering sacrifices for an excommunicated person is also directly beneficial to the faithful, both spiritually through the merit of charity, and temporally through the stipends that these can receive from the offerings made for him.

III. Private use of the active sacraments, and administration thereof. These are, however, licit for a censured person, provided that he is not

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required to do so, and he does not object, for example, if he is a pastor whose subjects are bound to hear the sacraments, and there is no other priest available to celebrate; indeed, even if he is not a priest, he may be asked and invited to celebrate. And, although the common doctrine is that, as stated in Laym. here, c. 4, the faithful sin if, without a necessary cause or great benefit, they induce a censured person to administer the sacraments, when another minister is available, it is nevertheless probable, due to the faculty granted by the Council of Constance to communicate with such persons; and therefore, Laym. l.c. n. 5, citing Soto and Sanch. l. 7, de matr. d. 9, n. 8, teaches that neither the person who requests the sacrament from a censured person, nor the censured person himself, if he confers it, sins precisely because of the censure. The same is taught by Bonac. d. 2, q. 2, §. 2, and Vasq. Suar. etc. (See notes 438 and 439).

'However, the administration of the sacrament is illicit, except in the case of extreme necessity, outside of which it is validly administered, except for the sacrament of penance, because this requires jurisdiction, which he himself lacks. See Laym. here, c. 2; Bon. l.c.'

For greater clarity on this point, it is necessary to consider when censured persons validly administer the sacraments, and when it is licit.

466. Here is the question: I. Does a censured person validly administer the sacraments? The answer is affirmative (except for the sacrament of penance, as will be explained later). This is taught by S. Th. 3, p. q. 64, ar. 9, ad 2, and others, in common with Salm. de cens. c. 3, p. 3, n. 26. The reason is that where the essential elements of the sacrament are present, the Church does not presume (nor could it) to invalidate it. Some exceptions are made for the sacrament of matrimony; but in this case, it is still probable, as we have said in l. 6, n. 4082, that a censured parish priest, even if suspended, would validly assist, and would also licitly grant permission to another to do so."

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Concerning the dispensation for marriage, according to the words in book 6, number 4084, contrary to Croice, book 7, number 467. The Sacrament of Penance, however, cannot be validly administered by an excommunicated person who is to be avoided, even if there is no necessity. The reason is that for this sacrament, the minister requires not only the power of order, but also jurisdiction, which he has lost through the Church's censure, as stated in chapter "Omnis," etc., concerning penance and remission, and in canon "Ad probandum," concerning sentences and judgments. And so, generally, the Doctors, along with Palafox, Suarez, and Salm, in "De censuris," chapter 3, page 3, number 27, agree. And this is so, even if the confession concerns only venial sins, as Salm states, ibid., at the end. For the same reason, a parish priest who is to be avoided cannot lawfully delegate jurisdiction to another to hear the confessions of his parishioners; Croice,

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book 7, number 477. Understand, unless this is possible through a special privilege.

468. I have stated that the Sacrament of Penance cannot be validly administered by an excommunicated person who is to be avoided, because, if he is tolerated, he certainly can validly administer this sacrament; for he is not deprived of jurisdiction, since this is necessary for the benefit of the faithful; Croice, book 7, number 247, and Salm, ibid., number 30, at the end, with the consensus of others. However, can an excommunicated person who is to be avoided validly and lawfully absolve someone at the point of death? See the words in book 6, number 560, question 1, where we held a negative opinion, along with the Doctor Thomas Fagnani of Petrocor, and others, contrary to the more common opinion; but no one is considered to hold the common opinion, as we stated in book 6, number 88, because not all diligence has been applied.

469. Question 2. Can an excommunicated person ever lawfully confer the sacraments? And here, a distinction must be made between an excommunicated person who is to be avoided and one who is tolerated. For a person who is tolerated, although generally forbidden from administering the sacraments under a grave penalty, according to canon "Apostolicae," concerning excommunicated clerics, can always lawfully confer any of the sacraments when required, as we stated in this book, number 439. And Palafox adds, in "De divinis," 2, page 8, number 3, that, if a feast day occurs, and there is no other priest to say Mass for the people, a tolerated person can lawfully celebrate Mass, even if he is not asked; because it is justly presumed that the people are asking for Mass in order to fulfill their precept, unless otherwise it would cause scandal.

470. However, an excommunicated person who is to be avoided cannot even, when required, administer the sacraments. However, he can probably administer the Holy Eucharist; and also Extreme Unction, when the sick person cannot receive another sacrament. Can a parish priest who is excommunicated assist at a marriage? Or can another lawfully grant him permission to assist? See the words concerning marriage, numbers 4082 to 4084. However, Palafox, Roncaglia, and Salm, in "De censuris," chapter 3, page 3, number 36, along with the Councils of Dian and Corn, state that an excommunicated person who is to be avoided can also lawfully administer the sacraments, when otherwise he would fear a serious inconvenience, such as damage to his reputation or property; because the precepts of the Church do not obligate when there is a serious inconvenience.

471. Finally, question 3. What penalty does an excommunicated person incur for illicitly administering the sacraments? Answer: He incurs an irregularity, whether it is...

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It is to be avoided, or tolerated, according to the aforementioned canon

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concerning minor excommunication. Similarly, if he performs baptism solemnly, or solemnly blesses marriages, this is the case; otherwise, if done privately, as stated by Salm, ibid., no. 40. However, it is doubtful whether an excommunicated person who is to be avoided, while administering the sacrament of penance, still incurs irregularity. Rich. denies this, and Suar. considers it probable, as stated by Salm, ibid., no. 40, near the end, because in that case, the consummated act is lacking. However, most commonly, Palamus affirms this, d. 2, p. 8, no. 43; Suar., d. 44, sect. 3, no. 45; Bon., de irreg., d. 7, q. 3, p. 5, no. 6; Cont. Tourn., tr. de irreg., part. 3, cap. 4, concl. 4, and Salm., ibid., no. 44. Because here, even the attempted act is punished, since it is already considered sufficiently consummated when the minister intends to absolve contrary to the law. But this reasoning does not persuade; rather, this opinion seems more probable, based on the canon: "If anyone," causes 44, q. 3, where Martin V. declares that any irregularity is constituted by one who, after excommunication, presumes to act as if in his office as before. Note that this implies a similarity of action; therefore, even if he invalidly absolves, he incurs irregularity. 472. - Therefore, he who receives the sacrament from one who is to be avoided without necessity, sins gravely, and incurs a minor excommunication. But he who receives ordination from a bishop who is excommunicated and to be avoided, also incurs suspension from the exercise of the order received, according to the canon. See Salm., de cens., c. 3, p. 3, no. 42. 473. - "IV. In the private exercise of divine offices, so that an excommunicated person not only lacks the fruits of these, but also cannot participate in them under pain of mortal sin, in a notable way, so that he is morally considered to be communicating with others, unless excused by ignorance, or necessity to avoid scandal." (However, even if scandal is avoided, an excommunicated person is also bound to leave a Mass that he has begun, if he has not yet consecrated it. S. Thom., 8, p. q. 83, art. 6, ad 2.) "or another just cause: Bon., loc. cit., p. 3, § 4, from Suarez, Fill., etc." Similarly, others also sin who, with an excommunicated person who is to be avoided, attend the same Mass, as commonly taught by Bon., loc. cit., no. 9, against Durand, because they participate with him in the Divine. However, it would be different if, passing through the church, he were doing something else, or if he prayed briefly and privately, or entirely separately; because in such a case, he would not be morally considered to be communicating with others, nor joined in a common prayer. Bon., loc. cit., no. 46, from Suar., Henr., Fill., Coninck, etc. And although this sin is of a mortal nature by its very nature, because of the smallness of the matter, it is only venial, such as when, up to the Gospel only, he listens with him, Avila, Dian., p. 5, t. 5, res. 21, or if the Hours are recited privately with him, Dian., part. 5, t. 9, r. 89, from Suar., and others nine. (As also held by Salm., de cens., c. 3, p. 3, no. 63, with Con. Bon. and many others. However, he would sin gravely if, with one who is to be avoided, he recited in the choir, or publicly, and

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solemnly, as stated by Salm., ibid.)

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62. Finally, the server, who, at the command of the Lord, recites the excommunicatory formula with him, does not sin in the least, because at that time he does not communicate, but only performs the service due to his office. Thus, it is probable (Croci, *l. 7, n. 214, with Suarez and Disp. ex c. Quoniam, 14th place, q. 3, § 174). For a better understanding, it should be noted that the use of sacred images and relics, and their veneration, is not prohibited to an excommunicated person; indeed, nor is the use of blessed water, and other sacramentals, not that he may participate in the fruit which they produce through the Church's blessing, but only that he may venerate them. (Suarez, *d. 12, sect. 3, n. 3; Palatinus, *d. 2, p. 9, n. 14; and Salmanticensis, *de cens., c. 3, p. 6, n. 67, with Henricus and Sayrus). He may also enter the church at times when the Divine Office is not being celebrated, to pray privately, and separately from others in a designated area, as is commonly held (Suarez, n. 1; Palatinus, *l.c.; Bonaventure, *q. 2, p. 3, § 2, n. 8; and Salmanticensis, *ibid., n. 68, with Concinius and Cajetan). Others add that he may even pray privately in the same area where others are praying, because when praying privately, he does not communicate in the least with others. Indeed, Salmanticensis (*ibid.*, with Concinius, Bonaventure, Dionysius, Turrecremata, Paludanus, etc.) states that even when the Divine Office is being celebrated, it is not prohibited for an excommunicated person to enter the church in order to free himself from onlookers, or for some other reason, and if he prays privately there; because at that time he has no communication with others. Therefore, priests are not obligated to cease their duties, nor to repel him, nor are others obligated to leave the temple.

175. However, an excommunicated person would sin gravely if he were to attempt to attend Mass, or to participate in services, and similar public functions, as stated in *Illud de cleric. exc. min.* and in *c. fin. de sent. exc.* And if, after being warned by a priest, he refuses to leave, he incurs the excommunication reserved to the Pope, as stated in *Eos, de sent. exc.* As does one who, having been denounced under an interdict, stubbornly attends Mass, and all those who prevent an excommunicated or interdicted person from leaving, as stated by Palatinus (*d. 2, p. 9, n. 4), Bonaventure (*q. 2, p. 3, § 1, n. 7), and Salmanticensis (*ibid., n. 70*, from *c. Gravem, de sent. exc.*). It should also be noted that a priest who celebrates Mass in the presence of an excommunicated person incurs an irregularity, as stated in *c. Tanta, de excess. prælat.* (See Salmanticensis, *l.c.*).

176. Furthermore, if an excommunicated person is to be avoided, and he refuses to leave the church after being warned, clerics are obligated to expel him (even if he is a priest), if they can; or, if they cannot, to cease their duties and do other things, which are described in Busenbaum, otherwise

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they sin gravely and incur a lesser excommunication, as stated in *c. Is qui, de sent. exc.* and Clementinus, 2, *eod. tit.* And so, Bonaventure (*q. 2, p. 3, § 4, n. 9*) and Salmanticensis (*de cens., c. 3, p. 6, n. 72*) also state that it is gravely sinful to attend the same Mass that an excommunicated person attends, unless some necessity excuses it, or the matter is of little importance. This seems more probable, because in the Mass, all those who are listening necessarily participate in one and the same oblation. Although Suarez (*ap. Salmanticensis, l.c.*) does not explicitly state this.

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It is commonly said that those present incur only a venial sin; and this opinion is held probable by Pal. d. 2. p. 6. n. 5, and the same authors cited in Salm. n. 72, at the end, and Sayr. Fill. Henr. Krim. in Croix, l. 7. n. 207, because such a communion seems too remote and accidental, unless those present are also the cause of the excommunicate's interdict. However, even with this reasoning, no author excuses those present from at least a venial sin, and from a lesser excommunication. Generally, Bus., Pal. in the aforementioned passage, along with Suar., Sayr., Henr., Fill., Bon., and others, agree with Salm. ibid. n. 73, and Ronc. q. 5, that if those present hear a Mass different from the one heard by the excommunicate, then neither they nor the celebrant are obliged to leave, because there is then no communion in the same divine act, and the presence of those present is materially in the same place.

477. – "By divine offices are understood the sacrifice of the Mass, public prayer, processions, the singing of the hours, the blessing of oils, water, and candles, and other things pertaining to the clerical order, which are performed solemnly, except for the sermon." (For hearing a sermon, or a reading of theology, canon law, etc., is not forbidden to the excommunicate, nor to others with him, because there is no communion there; see c. Responso, de sent. exc. Salm. dict. n. 73, Croix, l. 7. n. 284. The excommunicate himself cannot preach or read, unless he is tolerated, and requested by others; or unless he is obliged to do so by his office, because in that case it is presumed that he is requested by others, as Suar. d. 42. s. 2. n. 5, Pal. d. 2. p. 9. n. 5, with Bon., and others, agree with Salm. in the aforementioned passage, at the end.) "In these [offices], although other faithful are not obliged to avoid a tolerated [excommunicate], they are obliged to avoid one who is not tolerated [under pain of mortal sin]" (from c. Is qui, de sent. exc.). "Unless, of course, the lightness of the matter, or ignorance, or something similar excuses [them]." Therefore, if such a person is present, he should be warned to leave; if he refuses, he should be expelled, or removed, even if he is a priest (from c. Veniens, de sent. exc.); "unless, however, a greater inconvenience is feared, in which case, if he cannot be expelled, the office should be omitted, even on a feast day; and the celebrant, before the canon has begun, should interrupt the Mass; if the canon has begun,

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he can continue the Sacred Office, with the others leaving," (as Suar. and Henr. hold against Bon. and Corn. in Salm. de cens. c. 3. p. 6. n. 74, at the end, who consider both opinions to be probable) "or he can interrupt it, because of the probability of both opinions; if he has consecrated, he should continue, with only the minister present, until the communion, inclusive; and he should complete the rest in the sacristy, or another suitable place" (as is certain with Salm. dict. n. 74). If the excommunicate neglects to seek absolution, with the intention of not hearing the Sacred Office on a feast day, he sins mortally by omitting the Sacred Office; otherwise, if he neglects it for another reason. (See the statements in n. 464.)

478. – "If he is also obliged to the Hours, he is not excused from them." (Thus, comm. Laym. c. 2. n. 7, Sayr., Cov., Avil., etc., agree with Salm. ibid. n. 66. Even if he is obliged to the office solely by the title of his benefice.) And...

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If he does not receive the fruits of that benefice, this proceeds from his own fault; Croix, book 7, number 324. As Pal, Suar, Nav, Laym, and Salm, in the same place, note, citing Cov and Avila, that if he is entirely deprived of the benefice, then he is no longer obligated, by reason of the benefice, to recite the Divine Office, and he may say: "Dominus vobiscum," but, "Domine, exaudi, etc." (However, if he were to say only, "Dominus vobiscum," he would sin venially, as Salm, ibid., number 64, with Bon and Henr, and even Avila and Hurt, in Pal, book 2, page 9, number 8, and Nav, in Salm, in the same place, say, that he does not sin in any way when he recites it alone, because "Dominus vobiscum" is only a private prayer for others, as when he says in the Invitatory: "Venite adoremus.") "If, however, he reads the hours privately with another, he seems to sin only venially." (For although in canon 41 of the Council of Trent, question 3, it is forbidden for an excommunicated person to recite the Divine Office with others, even privately; yet, if there is no scandal or contempt, does it seem a grave matter for a companion to recite the Office privately with him, as when saying the Rosary? Thus, probably, Cont. Tourn. de cens. part II, chapter 4, section 4, question 2, answer 2; Bon, question 2, page 3, paragraph 2, number 4; and Con. Dian. Cov. Corn. Ugol. apud Salm. de cens. chapter 3, page 6, 4, 63. If, however, he is tolerated, he does not sin in any way if he recites with another, requested by him, according to the statements in number 438, see above.) 479. — "The collation of a benefice made to an excommunicated person is null, as is also" the presentation, or election, institution, and confirmation. The reason is that an excommunicated person, even if tolerated, cannot exercise the office; therefore, he is incapable of receiving a benefice, which is given because of the office. And this, although the excommunication is unknown, because invincible ignorance, although it excuses from guilt, does not supply the lack of the condition required for the validity of

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the act; see Less, book 2, chapter 34, division 22. Indeed, it is probable that an excommunicated person, even if he has previously obtained a benefice, is nevertheless deprived of the fruits and distributions that belong to him, and therefore must restore them, even before the sentence of the judge, because he is deprived of the office; for the fruits are given because of the office, as a wage for the work. Thus, Suar, and others, against Sanch and Cont., who probably hold that, if he serves the benefice himself, or through another, he must restore them before the sentence. 480. — More things are to be noted and examined here. Indeed, there is no collation of a benefice, election, etc., made in favor of an excommunicated person, according to canon Postulastis, concerning minor ecclesiastical excommunications. Hence, it is to be noted that I. not only those who receive, but also those who confer, etc., sin gravely, and incur, in addition to minor excommunication, even suspension from the collation, as cited above. See Salm, ibid., page 9, numbers 98 and 97. However, the collation is valid if the Pope knowingly confers the benefice, or if in the grant of the Pope there is a clause of absolution from censure, in order to validly effect the grant, unless the person is excommunicated for heresy, which is not included in the general absolution; Salm, de cens. chapter 3, page 9, number 98, at the end.

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II. It is to be noted that what has been said concerning benefits applies also to the conferral and reception of ecclesiastical dignities that possess jurisdiction, such as bishoprics, priories, and the like; thus, Suarez, d. 48, sect. 1, n. 7; Bonaventure, q. 2, p. 4, §. 1, n. 3; Palearius, p. 40, n. 9; and Salmeron, ibid., n. 102. Whether the same holds true for secular dignities is affirmed by Salmeron, ibid., n. 103, along with Bonaventure, Cornejo, Henr. Gareia, Ugol, etc., because excommunicated individuals cannot validly exercise acts of jurisdiction. However, Palearius, d. 2, p. 40, n. 44, denies this, as do Con. Fill., Gibell, and Hurtado, cited by Salmeron, ibid. (who call this view more probable). The reason is that there is no express law invalidating the conferral of such dignities by reason of excommunication. Nor does it matter that the acts of an excommunicated judge are null, as is taught more probably by Suarez, d. 16, s. 4, n. 2; Diaz, p. 5, tr. 9, r. 108; Salmeron, ibid., p. 44, n. 121, along with Con. and Hurtado, and Palearius, d. 2, p. 14, §. 2, n. 2, along with Innocent, Pandectes, Vasquez, Laym, Bonaventure, etc., because it is already established by custom that the annulment of acts prescribed by the ecclesiastical judge in c. Cum audimus, caus. 24, q. 1, and in cap. Tanta, de excess. prælat., extends even to the secular judge. It is responded that, although an excommunicated person is hindered from his external office, this does not make the conferral of the office null; for after absolution, such a judge can validly and lawfully perform his duties.

III. It is to be noted that what has been said concerning benefits also

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applies to the pension of a cleric, which is granted in lieu of a benefit for ecclesiastical service; and to the ecclesiastical pension, even if temporary, which is granted for ecclesiastical service, such as to a Vicar or Coadjutor Bishop; thus, Salmeron, ibid., p. 9, n. 107, along with Palearius, Suarez, and commentators. Conversely, if the pension is merely secular, or even mixed (as stated by Busenitus, l. 5, n. 137), it is probable that Palearius, Avila, Laym, and Salmeron, ibid., n. 108, would hold otherwise.

IV. It is to be noted that if someone was presented or elected to a benefit before excommunication, he validly accepts it and obtains possession, even if he is excommunicated at the time of acceptance, because acceptance or possession are not acts of jurisdiction, but private acts; thus, Palearius, p. 10, n. 48; Bonaventure, §. 4, n. 9; Covarrubias, Avila, etc., along with Salmeron, de cens., c. 3, p. 9, n. 440 (contrary to Suarez, apud Cont. Tourn. de cens., part. II, cap. 1, art. 3, sect. 5, Quær. 2, who considers Suarez's opinion to be equally probable). Conversely, it is to be said that if he was excommunicated at the time of conferral, even if he was absolved at the time of acceptance: this is the common opinion; see Salmeron, ibid., n. 144. Therefore, a new conferral is required; although Salmeron, ibid., at the end, along with Lessius, Bonaventure, Ndav., and Henr., believe that it may suffice that he remained in the first intention.

V. It is to be noted that an excommunicated person who receives a benefit cannot enjoy the fruits received during the time of excommunication; even if he is subsequently absolved and regains possession of the benefit. However, in that case, if he has satisfied the obligations attached to it during that time, either by himself or by others, he may retain the fruits.

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Because the fruits of a vacant benefice, where there is no right of spoliation, pertain to the successor, as Bonaventure states in *De Anima*, part 2, question 2, paragraph 4, section 1, number 5, and Salmeron in the same place, number 101, citing the Council of Henry, Diana, and Leander. But where there is a law of spoliation, Palearius rightly states in *De Actionibus*, part 2, paragraph 11, number 4, citing Navarret, Henry, and Avila, that only the fruits corresponding to the service rendered can be retained. Indeed, Suarez states, in *De Haeresibus*, part 13, section 1, number 3, citing Contenson of Tournai, *in Hio, Diana*, page 3, paragraph 9, rule 89, and Salmeron in the same place, number 100, citing the Council of Henry and Cornejo, that if someone receives a benefice in good faith and renders service, then although they may be required to relinquish the benefice, they may nevertheless retain, or demand, the fruits corresponding to their due sustenance for the time of service rendered; because they have served the Church, and are worthy of due sustenance for that work.

184. — But let us inquire: Whether an excommunicated person, even one tolerated, is also ineligible for benefices, offices, etc.? Gibault, Navarret, Di-

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ana, and Hurtado deny this, and Lessius calls it probable, citing Salmeron in the same place, number 104, because the Council of Diana, which grants to the faithful the right to communicate with a tolerated excommunicate, consequently grants to the excommunicate the right to receive a benefice. However, Palearius, Suarez, Contenson of Tournai, Avila, and others, citing Salmeron in *De Censuris*, chapter 3, page 9, number 105, more correctly affirm that, although it may have been granted to others to communicate with a tolerated excommunicate, the excommunicate cannot perform offices; therefore, the collation is always invalid. I would object, if in some case, offices were to be performed for the benefit of those requesting the benefice and seeking that communication in those offices. Hence, it is permissible. Postel, in *De Clericis Excommunicatis*, states that a suspension may have been imposed against those conferring a benefice upon an excommunicate; however, Salmeron rightly states, in the same place, number 106, that this suspension was lifted by the Council of Constance.

482. — Let us inquire: Whether a collation of a benefice made to someone who is culpably ignorant of the fact that he is excommunicated, or not absolved from excommunication, is valid? Commonly, Palearius, number 4, Lessius, book 2, chapter 34, number 117, and Sanchez, Council, book 2, chapter 2, division 10, number 7, Suarez, part 3, and others, citing Salmeron in the same place, number 99, deny this. The reason is that ignorance excuses from guilt, but does not remove incapacity. However, Lessius and Salmeron state that it is probable that the opinion of Diana and Bauni, with Fabro, is correct, that the collation is sufficiently valid in that case, because the collator is accustomed to absolve from censures when providing for someone, in order to effect the present collation. Indeed, this is quite probable, as Cabass, *Tractatus Juris*, book 5, chapter 11, number 11, states.

483. — Let us inquire: Whether someone who is excommunicated after obtaining a benefice is deprived of the fruits before a judicial sentence, even if they have rendered service, either by themselves or through another? The Council affirms this, page 462, number 29, citing Suarez, Fillon, etc. But it is more probable that Palearius, Sanchez, Laym, Contenson of Tournai, Salmeron, and others, whom we have cited, deny this.

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4. n. 670. After having been excommunicated, one is indeed obligated to restore all fruits [of office or property], until he is absolved, even if, by himself, he does not cease to be excommunicated. Unless he is poor, so that he can apply the fruits to his own needs as a poor person; thus Laym. lib. 4. tr. 5. p. 2. c. 2. n. 40. Pal. dub. 2. p. 44. n. 6. and Salm. ibid. n. 447. with Avila, Sylv. Corn. etc. 484. — « VI: Private communication with the forum. Therefore, an excommunicated person » cannot be a judge, lawyer, or procurator; although he may respond for himself: Coninck, Præpos. Dian. p. 5. t. 9. res. « 144. » (And also to bring a counter-suit; and this, even if he

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can defend himself conveniently through another, as in Coninck, Pal. Suar. etc. against others apud Salm. de venis. c. 3. p. 44. n. 425.) « Also, a plaintiff, a notary; a witness, etc., » so that against an excommunicated person, even one tolerated, the defendant » can always object. » (Thus from c. Veniens, de testib. c. Pia, de except. in 6. and c. Nullus; catus. 3. q. 4. Although that plaintiff is excommunicated, he acts validly, until he is repelled, as from d. c. Pia. However, the Divine [Canon] and Lez. apud Salm. ibid. n. 448. do not gravely condemn the plaintiff who justly seeks his due, if he is not repelled. A tolerated person, however, may lawfully defend himself and others in court; as in Pal. punct. 14. Salm. ibid. with Avil. However, he cannot be compelled to defend others in court; although, if he does so, and receives a fee, he is not obligated to restore it: Nav. Av. Lez. Salm. l. c. in fin. The objection can be raised even after the judgment, before its execution: Salm. ibid. n. 449. from d. c. Pia.) « Which » means that if he does not do so, and the judge does not repel him, his actions will be valid, if he is » tolerated. It is different with a judge who is not tolerated, since he is deprived of the use of jurisdiction. » (This is rightly considered to be more probable by Salm. ibid. n. 421. according to the statements above in n. 480, ad Not. II. A witness also validly testifies, if he is not repelled; a tolerated person validly and lawfully testifies, if he is required by one of the parties: Salm. ibid. n. 423. with Avil. and Pal.) « See » Laym. c. 2. Dian. p. 5. t. 9. resp. 412. and 443. He cannot also » be a tutor, or curator. Dian. p. 5. t. 9. resp. 415. from Sylv. nor » an executor of a will. Dian. p. 8. t. 9. resp. 2. from Casp. etc. against » Sanch. Lugo, etc., if, however, no objection is made, he validly carries it out, ibid. Nor can he himself testify lawfully, even though he does so validly, even if he has appointed an heir as an excommunicated person. Suar. Villal. Merc. etc. with » Dian. l. c. res. 429. Finally, all contracts made by him (even » if they are illicit, and for that reason there is no action in the external forum during » the execution) are valid, unless they are made by him as a public official, or as a minister » by reason of his office; and benefits; because then they relate to a jurisdiction, which is suspended. Dian p. 5. t. 9. r. 428. from Con. Fill. Merc. etc. 485. — « VII. An excommunicated person who is not tolerated is deprived of the use of jurisdiction. Therefore, he cannot validly elect, confer, present, » enact laws, or pronounce a sentence; and he who does so, conferring a benefit from a non-tolerated

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"He who receives [the excommunicated person] is to be considered an intruder, and therefore, without any further declaration of law, he is bound to relinquish the benefit together with its fruits." (Thus, Salm. de cens. c. 3, p. 14, n. 421.) I said "not tolerated"; because the acts of one who is tolerated are likely to be considered valid for the common good; however, he sins gravely if he engages in such actions without necessity. (And this is certain, as stated by Salm. dict. n. 421, concerning the ecclesiastical judge, in c.

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Tanta, de excess. prælat.) 486. — "VIII. One who is not tolerated is deprived of ecclesiastical burial, so that he cannot be buried in a sacred or blessed place; and if the contrary is done, and the bodies can be distinguished, he must be exhumed, and divine rites must not be performed in that place before reconciliation. Thus, according to cap. Sacris, de sepult. However, a polluted Church remains polluted, and the cemetery also, but not the reverse, according to c. Consuluisti, de cons. eccl. in 6. If, however, one who has been excommunicated dies with signs of penance, he is not to be exhumed, but should be absolved, with a request for absolution from the heir; Salm. ibid. p. 7, n. 75, with Pal. and Corn. Those who accompany the deceased to burial sin gravely, as do the clerics who chant, etc. See Salm. ib. n. 77. Those who bury him incur a greater excommunication, according to Clement. 4, de sepult. However, by "those who bury" are not meant those who accompany, chant, etc. But do "those who bury" include those who arrange for the burial? Salm. ibid. n. 82, Pal. Con. Suar. affirm this, while Caj. Con. Avil. Henr. etc. ib. n. 81, deny it. Salm. ibid. n. 80, at the end, correctly states that both possibilities are probable. 487. — "I said 'not tolerated'; because the Church is not polluted, even if a heretic who has not been specifically denounced is buried in it, as taught by Suar., Laym., and others. (From this, those who are tolerated may lawfully be buried in a sacred place, if they have departed this life with signs of penance; Palaus q. 6, n. 42. Salm. de cens. c. 3, p. 7, n. 75. Nav. Con. Sayr.)" "Nevertheless, Bishops in Germany, for the most part, prohibit this, because among the other penalties for those who are not in communion during Easter, the deprivation of ecclesiastical burial is also established." 488. — "IX. An excommunicated person is deprived of all civil communion with the faithful, so that he himself cannot commune with others, and, if he is not tolerated, neither can others commune with him; and this applies in the cases mentioned in this verse: I. Kiss, II. Prayer, III. Greeting, IV. Communion, V. The table is denied. These are derived from what Pope Calixtus declared in c. Excommunic. caus. 41, qu. 3, where he said: 'Nor shall he communicate with them in prayer, or in food, or in drink, or in a kiss; nor shall he say "hail" to them; for whoever knowingly communicates with the excommunicated in these or other prohibited ways, according to the institution of the Apostles, shall be subject to a similar excommunication.' However, here, 'similar' does not imply equality."

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(namely, excommunication *major*), but only by analogy, since minor excommunication is similar to major excommunication. 189. — "It is said that *I.*, through which is understood a kiss, and every conversation, even a private one; also through gestures, letters, messengers, and any sign of goodwill." (Regarding the mission or acceptance of offices; Salm, ibid., p. 12, n. 135, with Bon. Avila, Reg., etc.) 190. — "It is said that *II.* *Orare*,

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that is, every communication in divine matters, as mentioned above." (See the statements in n. 173.) 194. — "It is said that *III.* *Vale*, which includes every greeting (at least honorific) by word, or sign, or embrace; and according to some, even the return greeting, because it is an act of observance; but the opposite seems truer, because it is the repayment of a debt. Indeed, Sayr., etc., with Dian., vol. 5, p. 9, res. 16, believe it probable that only the verbal greeting is prohibited, but not other signs, such as opening the head, etc., which are commonly done out of courtesy. 192. — Therefore, it is doubted 1. whether it is permissible to show signs of courtesy to an excommunicated person, such as rising, opening the head, giving way, without any expression of words? The first opinion, which is strongly probable, denies this; and this is held by Suar., d. 15, e. 1, n. 3; Pal., d. 2, p. 17, n. 4, with Laym.; Salm., de cens., c. 3, p. 12, n. 136, with Hurt.; Escob., lib. 50, n. 254, with Vasq. and Sylv., and Bon., d. 2, q. 2, p. 6, §. 2, n. 4, with Henr. Ugol. and Reg. The reason is that such acts of reverence, even if performed only with gestures, and without the intention of honoring, are nevertheless a certain communication, and true signs of friendship and greeting. The second opinion, however, affirms that it is permissible, provided that there is no intention of greeting; this is held by S. Anton., 3, p. tit. 25, c. 2, in princ., with Guil. Nav., cap. 27, n. 20, with Major. and Ang. Fill., tr. 13, n. 85; Spor., Suppl., p. 134, n. 97; also Sotus, Avila, Graff., and Sayr., apud Pal. The reason is that such acts are not exhibited as signs of friendship or communication, but to avoid the appearance of rudeness; and that, even if such acts involve some greeting, that greeting seems to have been introduced by custom as necessary, not to honor the excommunicated person, but so that he is not offended. This second opinion is deservedly called probable by the proponents of the first opinion, namely, Bon., Pal., Salm., and Escob. Especially (as they say, Croix, l. 7, n. 277; Mazz., vol. 4, p. 346; Bon., with Suar., loc. cit., and Renzi, vol. 1, p. 542, q. 4, with Laym. and Pelliz.) if the excommunicated person is a superior, or a public person, such as a Bishop, judge, etc., because in such cases, the aforementioned signs are more likely to be exhibited to avoid damage or offense to that person. 193. — It is doubted 2. whether it is permissible to return a greeting to an excommunicated person? Bus., as above, and Fill., tr. 13, c. 5, q. 3, n. 84; Henr. and Krimer, apud Croix, l. 7, n. 277, affirm this, and Pal., d. 2, p. 17, n. 4, considers it probable, because, as

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They argue that this greeting is not an act of honor, but rather the fulfillment of a duty, which does not appear to be forbidden by the Church. However, it is more probable that Bonaventure (d. 2, q. 2, p. 426, § 2, n. 4), Holzapfel (p. 382, n. 197), and Salm (de cens., c. 3, n. 436, with Avila) deny this. The reason is that, since it is forbidden to greet an excommunicated person, that person has no right to be greeted, because they are deprived of

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this courtesy as a punishment for their crime. Similarly, it is also more probable, according to Bonaventure (l.c.), Croia (d. n. 277), Vivaria (decens, q. 3, art. 2, n. 9), Salm (cited, n. 436, with Avila), and Renzi (p. 544, q. 2, with Pellizzari) (contrary to Sa and Henry, whose opinion Mazzella considers probable, t. 4, p. 346), that it is not permissible to respond to a greeting from an excommunicated person. The reason is the same as above, because, since it is forbidden to communicate with an excommunicated person, that person has no right to receive a response.

However, regarding the greeting itself, I do not dare to say that the first opinion is improbable, because although an excommunicated person may not have the right to be greeted, that greeting does not seem to be a proper act of honor, and to deny it appears to be an act of contempt, or at least of rudeness. As for responding to a greeting, I cannot agree with the opposing opinion, because responding to a greeting seems to be a true form of communication. However, one who would insult an excommunicated person, or say to them, "May God enlighten you, and convert you," etc., does not incur any censure; so says, in general, St. Antoninus (p. 3, tit. 25, c. 2, in princ.), Salm (l.c.), Croia (l. 7, n. 276 and 277, 194).

"It is said that V. Communion includes all forms of intercourse; which is valid if it is done. (Thus, Salm, ibid., n. 438, with Paleari, Con. Av., from c. 32 of the Decretum, etc., etc.; however, it is illicit to witness a will for an excommunicated person, unless that person is a usurer. See Salm, ibid., n. 439.) Also, cohabitation, cooperation, and association, for example, in contracts, so that it is morally considered to be communication; which a prudent person will judge. Therefore, it is not permissible to travel with him as a partner. (Nor is it permissible to collaborate with him, to sit with him, or to live under the same roof; understand this in the manner of association; for otherwise, to sleep together, even in the same bed, is not forbidden, so it is probable, according to Suarez (d. 45, sect. 2, n. 8), Bonacich (part. 6, § 2, n. 5), Paleari (d. 2, p. 47, n. 5), and Salm (de cens., c. 3, p. 12, n. 437).)

495. "It is said that V. Mensa refers to all meals and banquets, in the manner of association and commerce; which is not the case if one happens to be in the same inn, on the same journey, at the same table, or even in the same bed. See Bonaventure (dist. 2, q. 2, p. 6, § 1 and 2). Therefore, it is not permissible to communicate with an excommunicated person at the same table formally, and this happens when an excommunicated person invites another to dinner; or when someone lives a common life with an excommunicated person, even if they do not eat the same food, as often happens in monasteries and seminaries, where, although there are different tables in the same refectory,..."

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In the refectory, nevertheless, all are considered to partake in the same meal and refreshment. It is the same when many are invited by an excom-

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municated person, and they lie down in the same room, even if on different beds; unless they lie down on beds that are very far apart, or are arranged in different rooms; thus Suar. d. 45, sect. 2, n. 6. Salm. ibid. n. 140, and lon. d. 2, q. 2, p. 6, §. 2, n. 5, with Henr. Avila, Sayr, Fill. Reg. and Ugol. Conversely, if someone were to eat with an excommunicated person in an inn, even at the same table, where each person intends only to attend to themselves, as Suar., Salm., and Bon. ll. cc. state, with Sayr. and others. Also conversely, if someone happens to meet an excommunicated person in the same house, on the same journey, or at the same table; Holzm. p. 382, n. 197. Spor. Suppl. c. 3, n. 97, and Pal. d. 2, p. 47, n. 5, with Suar., Laym., Sayr., and Hurt. 196.

"Question: What sin is it to communicate with an excommunicated person who has not been reconciled? Answer: Communion in the sacred rites is considered a mortal sin because of the gravity of the matter; in civil matters (and if it involves a lesser excommunication), provided contempt is absent, it is only a venial sin, regularly. Suar., Bon., etc. Dian. p. 7, t. 41, r. 47. (Thus also St. Thomas, q. 23, n. 3. Salm. ibid. p. 4, n. 7, and p. 42, n. 127, with Lez., Suar., and comm.) "I add that, sometimes, it is mortal, as when someone communicates with an excommunicated person in the same crime, for example, if someone knowingly keeps a concubine who is excommunicated. 197.

"It must be distinguished between the sin and the penalty of communicating with an excommunicated person. Someone certainly sins gravely in two cases when communicating with an excommunicated person: I. If they communicate with him in the sacred rites, unless the smallness of the matter excuses it, as stated in nos. 473 and 476. II. If they communicate with him in a criminal act, that is, in the same crime, or in obstinacy, for which the excommunication was imposed, for example, if someone, after the excommunication of a person, again knowingly keeps his concubine, as is stated in c. Concubinæ, concerning excommunication, or if someone, after an excommunication imposed on someone for theft, adultery, etc., gives him assistance or advice, so that he does not make restitution, does not abandon his concubine, or does not seek reconciliation; thus Bon. q. 2, p. 6, §. 4, n. 8. Suar. d. 45, s. 7, n. 4, and Salm. de cens. c. 3, p. 42, n. 133, from c. Nuper. 498.

"It is doubtful, however, whether it is mortal to frequently communicate in civil matters with an excommunicated person? There are two probable opinions. Nav. c. 27, n. 30, Pal. q. 48, n. 3, and Sayr., Avila, Henr. Reg., Dian., Leand., etc., state, as cited by Salm. ibid. n. 128, that communication in civil matters is, in itself, only a venial sin; and that a venial sin does not become mortal through any multiplication. Then, Nav. and Pal., with Sayr. and Avila, ll. cc., state that frequent communication can be mortal when the person communicating believes that the excommunicated person is taking the opportunity from that communication to persevere in his obstinacy. On

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the other hand, it is probable, as stated by Suar. d. 45, s. 2, n. 41, Bon. q. 2, p. 6, §. 4, n. 6, and Holzm. p.

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382. *Spor.* Suppl. p. 134, n. 99, and Salm. ibid. n. 129, with Vill. Con. and Fill. Ratio, which state that communication, even civil, with an excommunicated person, in order to avoid a grave matter, is considered a serious matter, and this is most clearly demonstrated in c. Excommunic. 14, q. 3, where (as we have said in n. 488), Pope Callixtus prohibits communication both in Divine and human matters. Furthermore, it is demonstrated in cap. Exceptionem 7, de except., where it is stated that the person communicating civilly with an excommunicated individual risks communicating their own soul; and, of course, a risk to the soul implies a risk of damnation, which is incurred only through mortal sin. Therefore, even civil communication can only be venial due to the smallness of the matter; however, if the actions are multiplied and joined together, it can become mortal. However, Cont. Tourn. de cens. part. II, cap. 4, art. 3, sect. 7, v. Dico 4, and Suar. Holz. Spor. and Salm. de cens. c. 3, p. 42, n. 129, with Con. 1, state that it is not sufficient for a person to sin gravely if they frequently, even over a long period of time, communicate separately with an excommunicated person, but rather that such communications must be connected, at least by the mode of a single intended object, namely, that they have a formal or virtual, or quasi-habitual, intention of frequently communicating with the excommunicated person over a long period of time, or of associating with them as a partner or servant.

499. — Regarding the penalty, the person communicating with an excommunicated individual, whether in human or Divine matters, incurs only a lesser excommunication. However, in three cases, they incur a greater excommunication: I. When a cleric knowingly communicates in Divine matters with an excommunicated person who has been specifically named and denounced by the Pope, according to c. Significavit, de sent. exc. See Salm. ibid. n. 434, with comm. II. II. When an excommunication is imposed against someone, and simultaneously against those who participate with them; therefore, the person who communicates with that individual (after a warning, however) incurs a greater excommunication, and cannot be absolved except by the one who can absolve the principal, as stated in S. Th. Suppl. q. 23, art. 3, Pal. p. 48, n. 6, and Salm. ibid. n. 432, with Avila, Hurt, etc. III. When someone knowingly communicates with an excommunicated person in order to avoid a criminal offense, as stated above in n. 497; and in this case, they can only be absolved by the one who can absolve the principal, according to c. Nuper, de sent. exc. See Salm. ibid. n. 433, with others. Furthermore, they add that the bishop who imposes the excommunication also incurs a greater excommunication if he communicates in a criminal offense.

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200. — Question 2: Is it ever permissible to communicate with someone who is not tolerated? Answer: Yes, outside of Divine matters, in these five cases: "Those who are included in c. Quoniam multos, can. 44, q. 3, and in the following verse are: I. Useful, II. Legal, III. Humble, IV. Regarding an unknown matter, V. Necessary."

204. — "I. Useful is understood in the case of utility, either of the excommunicated person themselves, e.g., in order that they may be converted; or of another, e.g., in order to..."

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It is permissible to seek counsel from an excommunicated person, advice which one cannot obtain from another; or even for temporal benefit, for example, to demand restitution or the fulfillment of a debt under a contract. However, it is not permitted to enter into new contracts with the excommunicated, although, if such contracts are entered into, they are valid, since there is no law prohibiting them. It is permissible to admonish the excommunicated with words, or in writing, for their spiritual good, and therefore to insert other words before or after, demonstrating sentiments of compassion, as in *Cum Voluntate*, concerning excommunication and signs of benevolence. See Soto, *Bon. Av.*, Salm, on censures, chapter 3, page 13, paragraph 142. It is also permissible to preach before the excommunicated. Whether it is permissible to instruct them in theology is debated; some, such as the Council of Avila, deny it, but Salm affirms it, as above, paragraph 143, along with Soto and Sayr, because in this case there is already a spiritual benefit for the excommunicated. For the good of others, whether spiritual or temporal, it is permissible to listen to a sermon from an excommunicated person, to seek their counsel, if another equally suitable person is lacking. See Salm, *dict.*, paragraph 143, at the end, with the Council and Soto. It is also permissible to continue a previously established association with the excommunicated; also, to request medicine or alms from them, as Palatius states, page 19, paragraph 2; Suarez, part 15, section 4, paragraph 8, page 6, section 2, paragraph 10; and Salm, as above, paragraph 144, with the Council and Avila, 202.

II. Concerning the law, that is, in the case of matrimonial law: how is it permissible for a wife to communicate with her husband, and vice versa, unless a divorce has been decreed? See Diaz, page 5, volume 9, paragraph 122. However, it is not permissible for a betrothed to communicate with their betrothed, as above, paragraph 136, according to Sayr, Sanchez, and Fill. Therefore, it is permissible for both the excommunicated person and their spouse to demand and render what is due, in order to avoid the danger of incontinence, and in all other matters to converse with each other. See D. Thomas, part 4, question 18, article 4; Soto, question 2, page 6, section 2, paragraph 18; and Salm, as above, paragraph 147, with Suarez, Sanchez, and Palatius, from chapter *Inter alia*, 34, concerning excommunication,

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where it is permitted for both spouses and children, servants, etc., to communicate with the excommunicated, in order to render them due obedience. However, in three cases, such spouses cannot communicate with each other: 1. When they themselves have already been separated by divorce, as Busembach and others state, as above, Soto, paragraph 21; Salm, on censures, chapter 3, page 13, paragraph 148, and others generally. 2. When the excommunication is *latae sententiae* because of doubt concerning the validity of the marriage, as Contenson, *Tourn.*, on censures, part II, chapter 1, article 5, explains. See Holzmüller, volume 1, page 383, paragraph 202, and Bonacini and Salm, as above, chapter 3. 3. When one of the spouses has been excommunicated for heresy, as in the decree from chapter *Decrevit*, concerning heretics, number 6. See Salm, as above, paragraph 148, at the end.

A doubt arises: 1. Is it permissible to communicate in the Divine Sacraments with an excommunicated spouse? The first opinion affirms this, and Salm, as above, paragraph 154, and Sanchez, on marriage, book 9, question 14, paragraph 5, agree with this, along with Navarrus and Henricus. They prove this from chapter *Quoniam*, as above, 14, question 3, where Gregory VII seems generally to exempt spouses (as well as children, servants, etc.) from the anathema, if...

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They should communicate with the excommunicated in those things in which they are accustomed to communicate. However, the second opinion, which is truer, denies this, and this opinion is held by Bonaventure in *Quaestiones in Aristotelem*, 2nd question, part 6, section 2, number 22; by the Council in session 4, decree 464, number 36; and by Cajetan and Armilla, as cited by Sanchez in his *Tractatus de Matrimonio*, chapter 1; and the reason is that in chapter 34 of the *Decretales*, under the title "Concerning Excommunication," Innocent III, explaining the aforementioned text of Gregory, says that wives and others, as mentioned above, can, indeed must, communicate with the excommunicated when it is necessary to render to him the obedience due; but it is by no means necessary for a wife to communicate with her husband in order to fulfill the obedience due to him.

Question 2: Can a spouse who knowingly married an excommunicated person subsequently communicate with him? The first opinion, which is very probable and more common, denies this, and this opinion is held by the *Doctor Thomae* in the Supplement, question 23, article 4; by Suarez in *Disputationes*, 15th disputation, section 4, number 36; by Palearius in the 2nd part, page 49, number 15; and by Salmeron in the same place, number 152, along with the Council of Angers and Sayr in *Controversiae Turonenses*, in the cited passage; and by the Council in session 4, decree 464, number 36; and also by Fill and Cornejo, as cited by Bossuet in *De Usu Mat-

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rimonii*, chapter 4, number 286. This is proven from the passage in chapter 34 of the *Decretales*, under the title "Concerning Excommunication," where it is stated that wives and other persons subject to a marriage bond are granted the faculty of communicating with excommunicated persons, in the same way as they could and were obligated to do before the excommunication; therefore, if the subjection arises after the excommunication, no license is granted to these persons to communicate. This is also proven by reason, because that subjection was unjustly contracted and unjustly acquired, and therefore those who have offended against it should not be excused from the burden of censure. The second opinion, however, affirms this, and this opinion is held by Sanchez in *Tractatus de Matrimonio*, book 9, chapter 14, number 3; by Bonaventure in *Quaestiones in Aristotelem*, 2nd question, part 6, section 2, number 48, along with Ugolini and Alter; and by Bossuet in the cited passage, number 288, along with the Council of Turia; and Palearius and Salmeron in the cited passages call it "merely probable." The reason is that in chapter 3, question 44, Gregory grants, without any restriction, to those subject to a marriage bond the faculty of communicating with an excommunicated person. Nor does the passage cited in chapter 34 of the *Decretales*, under the title "Concerning Excommunication," contradict this, because it says that those subject to a marriage bond are obligated to render obedience to the excommunicated person in the same way as before the excommunication; this does not at all prove that those who, at the time of the excommunication, entered into the subjection cannot communicate; rather, it is said there that those subject to a marriage bond are obligated to communicate, because the obligation to render the due obedience is not extinguished by the subsequent excommunication; therefore, just as that obligation does not cease because of a subsequent excommunication, so neither does it cease because of a prior one. Nor does it object that no one can obligate himself to do something illicit, such as communicating with an excommunicated person, because this would be the case if someone directly obligated himself to communicate; but it is not the case when someone is indirectly obligated by reason of a contract; therefore, although the subjection may have been unjustly contracted, since the contract itself is valid (as is certain).

[*Latin ed. p. 345*]

A valid marriage existing with a person who is excommunicated, it follows that the obligation to render due obedience arises and flourishes. And just as the aforementioned authorities say this regarding spouses, so they say the same regarding children and servants.

III. Humility, that is, in a state of subjection; for how can "even emancipated sons," (as Suar. d. 45. s. 5. n. 3, Bon. p. 6. §. 2. n. 29 and 33, Pal. p. 19. n. 10, and Salm. de cens. c. 3. p. 43. n. 149, along with Cornejo and Sayr, against Soto, Nav. etc. ibid.) "addit Diana p. 5. t. 9. r. 148 et 149, ex Con. Fill.

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Hurt. etc.," even adopted children, or illegitimate children, indeed even grandchildren, great-grandchildren, and those of the same kind of relationship, (as, for example, daughters-in-law, stepdaughters, etc. Salm. de cens. c. 3. p. 43. n. 149, along with Suar., Pal., Bonac., etc.) communicate with their parents, servants with their lord, and female servants with their mistress, if they were in service before the excommunication. Similarly, religious [persons] with their superiors; however, not except insofar as that communication which those living in the same household cannot avoid. Diana, l. c., r. 147, against Soto. See Fill. t. 42, c. 8, n. 203, Laym. and Bon. l. c. Thus, all servants, even those who serve without pay, and the entire family of an excommunicated person are excused, from c. *Quoniam*, and c. 34, concerning excommunication. See Salm. ibid., n. 150. Thus, even soldiers can communicate with a commander who is excommunicated, from d. c. 34. However, vassals are not excused with their lord, from c. *Nos sanctorum*, causes 15, q. 6, except insofar as the payment of taxes is concerned, if they are bound by an oath of fidelity, as Salm. ibid., along with Suar., Av., Corn. Nevertheless, in judgment, these are often excused for the sake of necessity or utility. Also, religious [persons] can communicate with their superiors who are excommunicated; Suar. d. 15, s. 7, n. 2, and Pal. d. 2, p. 19, n. 48, along with Bon., Sayr., and the common opinion, against a few. Whether or not servants who are excommunicated of the same lord can communicate with each other? Certainly not, by themselves, since in the cited c. *Quoniam* 11, q. 3, it is not permitted to them; however, they can, by accident, because they are morally obligated to live together; thus, Suar. n. 43, Nav. c. 27, Bonac. d. 2, q. 2, p. 6, §. 2, n. 32, and Pal. n. 23, along with Hurt., Sayr., and Ugol. However, this must be understood when those servants are serving, driven by the necessity of sustaining themselves, and moreover, they cannot conveniently leave that lord.

204. It must be noted, I, that just as sons, wives, and servants can communicate with an excommunicated person, so too can parents, husbands, and lords communicate with sons, wives, and servants who are excommunicated, S. Th. Suppl. q. 23, art. 1, Pal. d. 2, p. 19, n. 21, Bon. §. 2, n. 38, and Salm. de cens. c. 3, p. 43, n. 153, along with Soto, Henr., Corn., Avila, Con., and Hurtado. It must be noted, II, that servants, wives, or sons cannot communicate with an excommunicated person in the Divine [Sacraments], except only in those things in which communication is necessary in order to render that obedience which is due to him, as we said above, n. 202. Doubt 1. Hence, servants may...

[*Latin ed. p. 346*]

They accompany the Lord to Mass, and, having been lawfully ordered, they serve the celebrant who is excommunicated, or they recite the Divine Office with him, as Suarez states in *Disputationes*, 15, section 5, number 22, and Salm in *Tractatus*, number 154. However, this must be under-

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stood when servants are bound by their contracts to perform such services; otherwise, if they are not bound by their contracts, or if those services are extraordinary and do not pertain to their servitude, then they are not obligated, as Suarez rightly states in the cited passage. Furthermore, it is to be noted that the celebrant cannot use a cleric who is excommunicated, if he can conveniently use another.

To be noted: If servants come into the household of a Lord who is excommunicated, or if they rent their services to him before his excommunication, or even after his excommunication, but in good faith, because they are unaware of the excommunication, or because they are compelled by a grave necessity, they do not sin, and they can rightly communicate with him in the same manner as mentioned above. However, they do sin if they come knowingly, and without necessity, as Suarez states in the cited passage, number 13, Palearius, page 49, number 14, and Salm, ibid., number 154, along with the Council. But are they then obligated to depart afterwards, and do they sin by communicating? See the aforementioned section 202, concerning the one who contracted marriage with an excommunicated person; the same applies to servants who rent their services to an excommunicated person, as the aforementioned authors state.

IV. Ignorance: That is, in the case of ignorance of the law, or of the fact. It is certain that any ignorance, or inadvertence, whether culpable or not, excuses those who communicate with an excommunicated person, according to the words of Canon 14, question 3. However, there is doubt as to whether even culpable and grave ignorance excuses. Bonaventure denies this in *Decretum*, 2, question 2, page 6, section 2, number 14, and Salm, ibid., number 155, because the Church imposes excommunication on those who communicate with someone who should be avoided, and because communication is always a sinful act. Suarez, however, affirms this quite probably in *Disputationes*, 15, section 3, number 3, Holzmüller, page 383, number 202, Palearius, 2, page 19, number 24, along with the Council, and Hurtado. This is proven from the same Canon, namely: Firstly, because, when those who are ignorant are expressly excused, it seems that all who are ignorant are excused, and only those who communicate knowingly are condemned; secondly, because, when the Pope excuses the ignorant, it seems that he wishes to grant some favor to those who are culpably ignorant, while those who are innocently ignorant are excused by the very law of nature; thirdly, and this is more forcefully argued, in the aforementioned canon, the Pope states that he is moved to grant this indulgence because he sees many (and here he begins to speak) perishing daily, partly through ignorance, partly through simplicity, etc. Therefore, the Pope understands that even those who are vincibly ignorant are excused, because no one perishes through invincible ignorance.

V. Necessity: That is, in the case of necessity, whether of the soul, or of

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the body, or of temporal goods. Therefore, any grave necessity, whether spiritual or temporal, excuses both the one who communicates and the excommunicated person, and others, if the thing cannot be obtained from anyone else but from the excommunicated person, as is commonly the case.

[*Latin ed. p. 347*]

Bon. p. 6. §. 2. n. 59. Pal. p. 49. n. 29. et Salm. de cens. c. 3. p. 43. n. 157. cum Avila, Hurt. Sayr. et Lez. And this is clearly evident from c. Si vere 34. de sent. exc. and the aforementioned c. Quoniam multos. Thus, necessity also excuses a transgression through coercion, because human law does not obligate when there is a grave inconvenience, as rightly added at the end of the same place, Salm. according to the aforementioned l. 4. n. 175. 207. — Finally, it must be noted that no one is obliged to avoid an excommunicated person, unless it is morally certain to him that he should be avoided, or at least he knows it through public notoriety, or through the testimony of at least two trustworthy individuals, for we are not obliged to believe any single witness; thus, Sanoh. Dec. l. 4. c. 49. n. 63. Nav. c. 22. n. 82. Pal. p. 40. n. 26. Cont. Tourn. de cens. part. II. c. 4. art. 5. Quar. 4. et Salm. ibid. num. 156. cum Bon. Avila, and Corn. However, Benè notes Tourn. l. e. that in doubt as to whether someone should be avoided, it is not permissible to administer the sacrament of penance to him, due to the danger of it being received invalidly. They say Suar. d. 45. s. 3. n. 7. Pal. n. 27. Bon. §. 2. n. 54. et Salm. dict. n. 456. at the end, with Cov. Avila, Corn. and Hurt. that we can lawfully communicate with one who has been excommunicated if there is public notoriety of his absolution; or even if the excommunicated person himself (who is otherwise worthy of faith) asserts that he has been absolved, we can believe him.

DUBIUM IV. For what reasons is a major excommunication incurred?

208. — « Since there are many, the excommunications are also varied, and are divided into 4 classes, for some are against all, others against the Bishop, others against the Pope by a Bull of Communion, and others are reserved to him outside of that.

ARTICLE I. What are the excommunications that are not reserved.

909 Excommunications against all.

210 Against clerics.

211 Against religious.

212 Excommunications added by the Council of Trent.

Dub. 1. Do those who force girls to enter monasteries, only for the purpose of education, incur excommunication?

Dub. 2. Do those who force them to show greater reverence incur excommunication?

Dub. 3. Do those who force young men incur excommunication? Do those who prevent a girl from entering incur excommunication?

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209. — « RESP. 1. According to ancient law, the following are customary: Against all:

4. Against those who harass ecclesiastical persons, who have not chosen him for whom they were asked, c. Sciant, de elect. in 6.

2. Against directors.

[*Latin ed. p. 348*]

Concerning Nuns: If they foster discord during elections, see the canons on penalties, title 3. Concerning those who extract absolution from censure through force or fear, see the canons on matters done by force, etc., chapter 6, canon 4. Concerning those who compel ecclesiastical persons to submit the rights of the Church to laypersons, see chapter 2 on ecclesiastical rights not pertaining to the laity, canon 5. Concerning those who teach law or medicine to religious persons who have laid aside their habit, or who retain them in their schools, see chapter 6, canon 2 on non-clerics, etc. Concerning those who bury during times of interdict, or those who are interdicted, or excommunicated and not absolved, or manifest usurers, see Clementine, book 1, chapter 6, canon 7 on burials. Concerning those who impede visitors of nuns, see Clementine, book 1, chapter 8 on the state of monastic life. Concerning those who contract marriage in prohibited degrees, or with nuns, see Clementine, book 1, chapter 9 on consanguinity. Concerning those who publish glosses on the Council of Trent, see Bulla 73 of Pope Pius IV, canon 40. Concerning those who print books without the permission of superiors, see Bulla 12 of Pope Leo X, canon 44. Concerning those who order their subordinates not to perform common duties for ecclesiastical persons, for example, not to sell to them, bake bread for them, etc., see the canons on those who, concerning ecclesiastical immunities (and it seems this is reserved in the Bulla Cœna, § 45, canon 12). Concerning doctors and professors who do not make a profession of faith, where Bulla 88 of Pope Pius IV, canon 43, has been received. Concerning those who neglect to administer justice in ecclesiastical matters, see the canons on administration, book 12, question 5, canon 14. Concerning those in power who foster usury, see Clementine, book 1, chapter 45 on usury. Concerning those who have valid appointments to orders and benefices from schismatics, see chapter 1 on schismatics, canon 46. Concerning those who occupy the property of vacant churches under the pretext of royal authority or defense, see the general canons on elections, chapter 6, canon 47. Concerning those who seek to involve the superiors of regular canons in matters other than manifest injuries and violence, see the end of chapter 6 on delegated offices, canon 48. Concerning those who, as judges, approach women under a false pretext to obtain testimony, see chapter 6, canon 2 on judges. Concerning those who order Christians to be killed by assassins, see chapter 20, canon 1 on homicide. Concerning those who grant, or extend granted reprisals against ecclesiastical persons, see chapter 6, canon 1 on injuries

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(for reprisals are when, having suffered an unjust injury, one invades the property of those who caused the injury, up to just compensation), canon 24. Concerning those who prevent the Ordinary from making a sequestrator on a benefice, or who occupy its fruits, see Clementine, book 1, chapter 22 on sequestrators and possessions. Concerning those who paint, varnish, etc., Hosts of the Body of Christ blessed by the Pope, see Bulla 2 of Pope Gregory XIII, canon 23. Concerning those who do not denounce heretics, magicians, soothsayers, or those who blaspheme God, the Virgin, and the Saints to the Holy Office, or to the Ordinary, see the Edict of the Holy Office, canon 24. Concerning lords who permit the agitation of bulls on their lands, which is dangerous, see Bulla 48 of Pope Pius V (except in the kingdoms of Spain, according to the aforementioned law, number 365). Concerning those who cause the statutes against ecclesiastical freedom to be observed, see the canons on exceptions, and this seems to be reserved in the Bulla Cœna, canon 210. — "Against Clerics: 1. Concerning clerics who have been appointed to a position, or priests, who publicly hear cases of law, or medicine, see the final canons on non-clerics."

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2. Concerning priests accepting secular offices, see *Clerici*, canon. Likewise.

3. Concerning lesser clergy lodging in houses belonging to Bishops, and using them as lodgings.

4. Concerning those who alienate Church property, or lease it for more than three years, see *Extravagantes*, *Ambitiosæ*, concerning Church property.

5. Concerning those who publicly denounce the Church's treasury funds in sermons, see Bull 41 of Leo X.

6. Concerning those who contract marriage while in Holy Orders, see *Clementines*, book 1, concerning councils.

7. Concerning those who falsely resign, or exchange benefices, see Bull 58 of St. Pius V.

8. Concerning those who presume to absolve from sins by means of the Bull *Cœnæ*.

9. Concerning those who interfere in another Bishop's diocese for office, without the permission of their own Bishop, see *Quoniam*, concerning the duties of Ordinaries.

10. Those who seek to have others occupy the rights and property of vacant churches, see *General*, concerning elections, chapter 6. And this seems to be reserved in the Council of Trent, session 22, canon 244.

— Against Religious:

4. Concerning those who study law or medicine outside the cloister, see *Non magnopere* and *Super specula*, concerning clerics.

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5. Concerning those who rashly abandon their habit, or contract marriage, see *Clementines*, book 1, concerning consanguinity.

6. Concerning those who establish a new Order, or acquire property without the Pope's permission, see *Clementines*, book 1, concerning religious houses, chapter 6.

7. Concerning those who go to the courts of princes to harm their monasteries or superiors, see *Clementines*, *Ne in agro*, section 1. Also, see *Quia verò*, concerning the status of monks.

8. Concerning those who keep arms within the cloister without permission, ibid.

9. Concerning those who do not observe an interdict when it is observed by the Cathedral chapter. See Fill., vol. 4, treatise 22, chapter 84. Bonac., book 4, paragraph 5, section 4, number 36. Also, number 7.

10. Those who do not fulfill the provisions in the Bull of Alexander VII, which begins with the words "Felici," concerning the visitation of nuns subject to them.

11. Those who seize tithes due to churches, or prevent them from being paid, see *Clementines*, book 4, concerning tithes.

12. Those who receive new houses from mendicant orders, or alienate houses that have been received without the Pope's permission, see *Clementines*, *Cupientes*, concerning penalties.

13. Those who do not observe an interdict imposed by the Pope or by a Bishop, see *Clementines*, book 4, concerning exceptions, chapter 44.

14. Those who receive Minor Friars of the Observance without the Pope's permission, or the permission of the General Order, and those who are received, see Bull 20 of Sixtus V.

— Also against Bishops:

4. Those who come to the city of Rome and depart without the Pope's permission, see *Extravagantes*, 2 and 3, concerning major superiors and obedience.

5. Those who obtain letters from princes for dignities, see Bull 96 of Pius IV, 242.

— Response:

2. To the above are added the following from the Council of Trent, which are valid where they are received:

4. Concerning those who print, order to be printed, sell, keep, or distribute books on sacred matters without the name of the author, and without obtaining approval from the Ordinary. (In the Council of Trent, session 4, Decree concerning printing, it is stated: "No one shall be permitted to print books on sacred matters, or to have them printed; nor to sell or keep them, without the name of the author, unless they have first been examined and approved by the Ordinary, under pain of excommunication.")

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5. Concerning those who teach that confession is not necessary before [receiving Holy Communion].

[*Latin ed. p. 350*]

1. Concerning the reception of the Eucharist, Council of Trent, Session 43, Canon 44, paragraph 3.

2. Concerning those who seize women, assist, or favor such actions, Session 24, chapter 9.

3. Concerning those who compel women to enter into marriage against their will, Session 24, chapter 9.

4. Concerning magistrates who do not assist Bishops in restoring or maintaining the enclosure of convents, Session 25, chapter 5, regarding regulations, paragraph 6.

5. Concerning those who introduce (regardless of their condition, or if they are laymen) into convents, without obtaining written permission, ibid., paragraph 7.

6. Concerning those who compel women to enter a convent, and to make vows, Session 25, chapter 48, regarding regulations.

* (But concerning this excommunication, see what is said below, verse "Regarding," etc.)

7. Concerning those who, without just cause, impede the free will of women in making vows, ibid., paragraph 9.

8. Concerning lords who grant on their lands a place for duels, Council of Trent, Session 25, chapter 9, regarding reforms.

Regarding the excommunication mentioned above concerning those who compel women to enter a convent, doubt 4: Do those incur it who compel a woman to enter a convent, not in order for her to make vows, nor to take the habit, but in order that she may be educated there honorably? Suarez, in *De censur.*, book 23, section 7, paragraph 9, Navarrus, *Consilia*, book 5, consultation 56, and Bonaventure, book 3, book 2, question 2, paragraph 2, paragraph 14, affirm this. They prove this from the Council of Trent, Session 25, chapter 48, regarding regulations, where those are excommunicated who have compelled any virgin, or widow, or any other woman, unwillingly (except in cases expressly provided by law), to enter a convent, or to receive the habit of any religious order, or to make vows. Therefore, the Council here distinguishes three elements, and inflicts censure on all those who compel a woman, whether to enter a convent, or to receive the habit, or to make vows; for the Council wished to prevent the opportunity being given to a woman to receive the habit, or to make vows less freely, because of the pressure of entering a convent, or out of shame for leaving. However, Sanchez, *Decreta*, book 4, chapter 4, paragraph 12, with Manuel, argues that in the aforementioned decree of the Council of Trent, there appear to be not three, but two elements; for there, those are

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condemned who compel someone to enter a convent (which is something common to two things, namely) either to receive the habit of any religious order, or to make vows. Therefore, those who compel someone to enter, only for the purpose of education, and not in order to receive the habit, or to make vows, are least likely to be condemned. And since we are dealing with penalties, according to the rule of law, the more lenient interpretation should be made. But notwithstanding this, the first opinion seems to me more probable, and I am led to this conclusion because the Council, after condemning the principal instigators, extends the censure to those who have given counsel, assistance, or favor; and to those who, knowing that a woman is not entering the convent spontaneously (note), or receiving the habit, or making vows; also to those who have interposed their presence, or consent, or authority in that act. From this second part of the meaning of the first, it is gathered that...

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In this second part, three cases are distinguished, in which those who consent to an act performed under coercion are condemned; namely, when a woman, against her will, either enters a monastery, or adopts the habit, or makes a profession: this must also be understood in the first part, concerning those who principally compel. However, since the Council includes cases expressly stated in law, Suarès and Bona, with Fillian, state it is probable that a woman may be compelled to enter a monastery as punishment for her crime, or to prevent her from falling into some incontinence, as is understood from o. Significavit, and c. Gaudeamus, concerning the conversion of runaway girls. Question 2: Do parents incur excommunication if they induce a girl to enter a monastery, or to adopt the habit, out of reverential fear? If the fear is conceived by the girl herself, without the cooperation of the parents, it is certain that they do not incur excommunication. It is doubtful if the fear arises from the declaration of the parents' will. Alex. Cons. Mon. o. 2. §. 2. q. 9. affirms that they do incur it, because, as he says, "he who does not contradict out of reverence is not legally considered to consent," according to the law. However, ff. de soluto matr. But Barbos. in Trid. sess 25. o. 18. n. 4. with Rod. Portel. Riocio, and Tam., state it is more probable that they do not incur it, because then the parents do not truly inspire fear, but the girl herself conceives fear out of reverence, according to the words of l. 4. n. 747. v. Idem, and l. 6. n. 4056. For a simple inducement or persuasion is not coercion, as Alex. admits in q. 7. §. 8. q. 4., and Barbos. refers the decision in all. 104. n. 3. from Armendar. And this is true even if importunate prayers are added, as Barbos. probably adds in l. o. in Trid. with Portella and Rodr. (against Alex.), because even importunate persuasion is not true coercion, which is required by the Council to incur excommunication: and when it is a question of punishments, such coercion must be strictly understood. On the other hand, Rodr. apud Barbos.

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says that if the prayers exceeded the limits of simple persuasion, namely (as Sanch. dec. l. 3. d. 7. n. 8. says), if the prayers are most insistent, and frequently repeated: for then they seem to involve a serious fear of future parental indignation. Suarès and Bona, with Fillian, add that girls may be compelled to enter a monastery for the sake of caution, or for some other just reason, according to the laws. Therefore, I say that, although absolutely speaking it is not permissible to compel them to enter for the sake of a better education, if, however, a prudent suspicion arises that she would be steeped in bad morals in the world, for example, if she is seen to be too inclined to converse with men, or if she has at home from where she could easily receive scandal from relatives, or servants, then I would not dare to condemn those who compel her to enter the monastery for the sake of caution; for in that case, the end of the Council prohibiting such coercion would be, not only adequately, but even contrary to, what it is, because if it were not done by coercion, a greater evil would occur; see l. 1. n. 499. To this, I refer what D. Jerome wrote to Læta: "Far be it that children should be lascivious."

[*Latin ed. p. 352*]

Girls, and those who are subject to secular authorities, must be kept away from religious communities, lest they teach what they have learned poorly. Doubt 3. Do those incur excommunication who force men to enter religion? Palatius affirms this in *Sanchia*, book 4, chapter 4, number 3, because the same ultimate reason applies to men as to women. However, Suarez, in *De Censuris*, book 23, section 3, number 8, and others, more truly deny this. *Sanchia*, book cited, with Bannez; Bonaventure, volume 3, book 2, question 2, number 45, with Fillius; Barbatus, allocation 104, number 7, with Miranda; and Bossuet, *De Effectibus Matrimonii*, chapter 10, number 74, with Navagius and Fagius, all disagree. The reason is that the Council only prescribes excommunication against those who force women, not men; furthermore, the penalty is not extended from case to case, even though the same reason may apply; moreover, the same reason does not apply to men as it does to women, because women are more easily and frequently induced to accept religious life than men. Although those who force others may be excused from censure, they cannot in any way be excused from grave sin. Furthermore, in the Council of Trent, session 25, canon 48, those who, without just cause, have hindered a holy woman, or another woman, from freely accepting the religious life, or from making a vow, are excommunicated. By "freely accepting," is understood the religious profession, which is made by receiving the veil. By "vow," is not understood a simple vow of chastity or of religion, but the same profession with three vows, without, however, receiving the veil, as is done in some monasteries; thus Suarez, *De Censuris*, book 23, section 7, number 20; Bossuet, *De Defectibus Matrimonii*, chapter 10, number 67, with Palatius

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and Bonaventure, volume 3, book 2, question 2, page 3, numbers 2 and 4, with Fillius. However, it is doubtful whether one incurs excommunication who merely prevents a girl from entering a monastery to receive the habit. Sanchia, *Decreta*, book 6, chapter 4, number 45, and Bonaventure, book cited, with Palatius, deny this, because the decree of the Council is to be understood strictly: namely, only when the profession is hindered. However, it is more probable that Suarez, in the place cited, and Bonaventure, number 3, with Fillius, affirm this. For whoever prevents a girl from receiving the habit, or from entering a monastery to receive the habit, consequently prevents her profession. And rightly, Bonacius, number 6, and Sanchia, number 4, state this. Finally, according to Salon, even those who, by deceit (and not merely by prayers), prevent a girl from becoming a religious, incur this excommunication.

ARTICLE II. What are the excommunications reserved to the Bishops?

113. Excommunications: I. Against those who lightly strike a cleric. II. Against those who are absolved at the point of death, and afterwards do not present themselves to their superior. III. Against the Minor Friars, etc. IV. Against those who procure an abortion of a conceived fetus, with secular effect. V. Against those who communicate in the same crime, etc. VI. Excommunications which Bishops reserve to themselves.

[*Latin ed. p. 353*]

216 Concerning excommunication imposed by the Monitorial Edict. 215 Whether one is obligated to reveal a crime, and if one does not reveal it, etc. 216 Whether there is an obligation to reveal a crime that has been amended? 217 Who, after being subjected to the Monitorial Edict, are excused from revealing [information]? 213. — ANSWER: There are the following: I. Those who are subject to a light blow by a cleric, or a severe blow if the person is a woman. (Regarding this excommunication, see below, no. 279.) II. Those who, being absolved at the point of death from censure or from a sin to which censure is attached, do not present themselves to their superior, after they have recovered, when such superior could otherwise absolve them. (Understand that, when the censure was reserved to the Bishop, see the aforementioned no. 92.) See Fill., vol. 4, chap. 10, nos. 241 and 242. III. Regarding the Friars Minor, if they admit into their churches Friars of the Third Order to perform divine services. IV. Those who procure an abortion of a living fetus, with the act successfully carried out. (See the aforementioned, vol. 4, nos. 395 and 397. When the fetus is considered to be animated, see there, no. 394. V. Also, Regulars can be absolved from this excommunication; see ibid., no. 397. Likewise, see vol. 7, no. 99, at the end.) V. Those who communicate in the same crime as those who are excommunicated by the Bishop. VI. All those whom Bishops prescribe through their own statutes, and who reserve [certain matters] for themselves, which confessors should consider in their actions. 214. — Here,

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briefly, concerning the excommunication that is imposed by the force of the Monitorial Edict, either to reveal certain crimes, or to restore something that belongs to another, and similar matters. And it should be said: I. If the crime does not involve the damage of a third party, no one is obligated to reveal it, unless there is a preceding infamy, or a rumor arising from credible people within the majority of the neighborhood, or of the college. The reason is that, without such infamy, the superior cannot inquire about that crime; thus, Sylv. Avil. Gib. with Salm., on censures, chap. 4, p. 4, no. 2. II. If the offense involves the damage of the common good, even if it is hidden, then it must be revealed, unless there is a firm hope that the correction would be beneficial; Salm., on censures, chap. 4, p. 4, no. 3, with St. Thomas, Bonaventure, etc. III. If the offense involves the damage of a third party, a distinction must be made. When the crime has already been committed, and it is so hidden that it cannot be proven, it is not to be revealed; otherwise, as Sotus, Corduba, and Avila say, if the crime can be proven by at least one other witness; or if it is in the process of being committed, and cannot be prevented by a warning. But in this last case, Salm. ibid., no. 5, with St. Thomas, Bonaventure, etc., deny this. When, in the Monitorial Edict, one is not commanded to denounce, but to testify, everyone is obligated to manifest, if there is a semi-plausible proof, even if they cannot prove it; Salm., ibid., no. 5, with Nav. and Avila. 215. — Question: Here, I. Is one obligated to reveal something by the Monitorial Edict, and if one does not reveal it, is one held liable for the damage to a third party? Answer: If one, through some artifice, prevents the Monitorial Edict from being notified to oneself, one is obligated to nothing, nor does one incur excommunication, nor does one sin by not revealing [the information]. However, one does sin, and

[*Latin ed. p. 354*]

It is asserted, if it has already been cited, as in Lessius, book cited, chapter 30, paragraph 54; Salmanticensis, ibid., paragraph 6, with the "Rebuke," etc. See book 5, paragraph 270. But is one bound to restitution? The "Controversia Tournhensis," treatise on censures, part II, chapter 4, article 4, section 2, and also Salmanticensis, ibid., paragraph 7, Navarrense, Soto, Valois, Sayr, etc., affirm this, because they say that here one would sin against justice, since the injured party has a right to testimony, given the judge's command. But it is truer to deny this, as Bonaventure states in "De Praecedentibus," question 3, paragraph 3, paragraph 43; Sylvester, Bonaventure, Bannensis, Tanquerey, etc., with Salmanticensis, ibid., paragraph 8. The reason is that one does not truly sin against commutative justice in such a case, but against legal justice, or against obedience, which does not obligate to restitution; see what was said in book 5, paragraph 270. However, it is excepted, as Salmanticensis, cited, paragraph 6, with Bonaventure, etc., if the witness has accepted the office of witness by order of the judge, and has

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begun to answer, because, with such acceptance, one is bound by justice to reveal the truth: but see what was said in book 5, ibid., paragraph 270, 216.

Question 2. Is there an obligation, by virtue of the Monitorial sentence, to reveal a crime that has been amended? Answer: Negatively, unless the crime has an effect in the future, for example, if it is homicide with adultery, which would cause an impediment to marriage, or similar things, or unless the crime is public, and the amendment is hidden; or finally, unless the superior intends not only the amendment of the thing, but also the punishment of the guilty party: thus Salmanticensis, on censures, chapter 4, paragraph 4, paragraph 46 and 47, at the end, with St. Antoninus, Sylvester, and Avila.

217. But who, after the Monitorial sentence, are excused from revealing? See what was said in book 5, paragraph 248. Question II. Add here, for the sake of clarity, that if in the Monitorial sentence, revelation is commanded to all who know, those who have only heard are not bound to reveal; and if even to those who have heard, those who heard from someone not worthy of belief are not bound to denounce: see Salmanticensis, ibid., paragraph 48. Furthermore, the "Controversia Tournhensis," in the place cited, observes: Therefore, it is gravely sinful, gravely, I, for those who request Monitorial sentences for trivial reasons. II, For judges who grant them in such cases, or when the matter can be proven otherwise; or if they foresaw that the people would disregard them; also, if the debtors are not able to pay, or if the matter is so old that there is no one who will reveal it; also, if the offense was committed in court, those who are not bound to denounce.

ARTICLE III. What matters are reserved to the Pope outside the Holy Supper?

218. Excommunications reserved to the Pope against all.

219. Excommunications reserved against clerics and religious.

220. Specifically, it is treated of: I, the excommunication against duelists and those who cooperate with them.

221. It is treated of: II, excommunications imposed against those who violate the enclosure of monasteries.

222. Doubt 1. Do those who enter without permission incur a reserved excommunication, if they do not enter under the protection of faculties?

Doubt 2. Do all who introduce things into the enclosure incur [such an excommunication]?

[*Latin ed. p. 355*]

233. Question: Should such a permission be put in writing? Question: Should the permission be special?

234. Question: From whom should it be granted?

235. Question: What reason is required to grant the permission?

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236. What else should be noted regarding the admission of doctors, and other officials?

237. Concerning the admission of confessors.

238. Question: Is someone admitted with permission obligated to also leave?

239. Concerning another reserved excommunication for those who violate the enclosure, and for those who cooperate with them.

240. Concerning another reserved excommunication against women who violate the enclosure of religious.

241. Which women are excluded from this prohibition? And which houses are called "convents"?

242. Concerning the prohibition of speaking with enclosed women, according to common law. What about those in regular orders?

243. Question: Is mere access without conversation permitted?

244. Question: Do those who speak through a medium, or by signs, incur a reserved censure?

245. Question: Does one sin gravely by conversing once with an enclosed woman?

246. Question: Is there any allowance for a small matter in such a conversation? And is there such an allowance for those in regular orders?

247. Question: Is it permissible to converse with an enclosed woman for the sake of utility, without permission?

248. Question: What about conversing with the Abbess?

249. Question: Who are exempt from this prohibition?

1. Relatives in the first and second degree.

2. Those who are closely connected.

3. The poor and those in need.

250. Question: What about the young?

251. Question: Do those in regular orders incur a latae sententiae excommunication from the Bishop?

252. Question: What about pilgrims?

253. Do Bishops who converse with enclosed women in another diocese incur a latae sententiae excommunication from the Ordinary of that place?

254. Dissertation on the censures regarding opinions pertaining to the Conception of the Blessed Virgin Mary. The bulls issued on this matter are mentioned.

255. When do those who contradict the pious opinion incur penalties? (up to n. 247.)

256. When do its supporters incur penalties?

257. The pious opinion is defended (up to n. 363).

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258. Is it permissible to issue a decree threatening with excommunication for the defense of the preservation of the Blessed Virgin Mary and against original sin?

248. - Response: 4. Against all, the following are particularly noteworthy:

4. Against those who set fires, c. "Tua nos," concerning excommunication. (But let them be excommunicated by a human being, and let them be denounced, as Cabrin notes in "de cas. res." p. 429.)

2. Against those who possess false apostolic letters and do not destroy them; also, against those who forge apostolic letters, c. Durand, ibid., title and chapter. Concerning forgers, regarding the crime of forgery.

3. Against those who violate and plunder churches, c. "Conquesti," ibid.

4. Against those who communicate churches with those excommunicated by the Pope, c. "Nuper," ibid.

5. Against those who harass those who have brought censures against others, c. "Quicumque," concerning excommunication.

6. Against those who are absolved from excommunication, under a condition, and not fully, c. "Eos qui," ibid.

7. Against those who violate a papal interdict, Extravagant.

8. Against those who give, and receive something by agreement, for admission to religion, Extravagant, concerning simony.

9. Against simoniacs.

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1. Those who, concerning orders or benefices, commit simony, Extravagant 2, title 10. Those who commit secret simony, Bull of Pius IV, 86, and Bull of St. Pius V, 44. Those who obstruct the execution of sacred penitential letters, Bull of July III, 42. Those who give or receive something for grace or justice, at the Apostolic See, Extravagant 4, concerning reserved matters, and Bull of Boniface VIII, 4, and of Gregory XIII, 4, 13. Those who commit violence, or cooperate in it, by inciting, etc., Council of Trent, chapter 19, session 25, and Bull of Clement VII, 44. (See concerning this excommunication, number 220.)

2. Those who induce women to enter monasteries of Regular canons, Bull of St. Pius V, 20. (See number 238.)

3. Those who oppose the Institute of the Society of Jesus, 46. Those who induce others to swear oaths that are illicit and contrary to ecclesiastical liberty, Bull of Gregory XIII, 93.

4. Those who seize ecclesiastical property, or who demand taxes from clerics, 48. Those who violate the liberty of the Church, concerning those who flee to the Church, Bull of Gregory XIV, 7.

5. Those who teach that confession can be made in absentia. (See below, note 36.)

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6. Those who condemn either opinion concerning the Conception of the Blessed Virgin as mortal sin or heresy; also, those who in sermons, or other public acts, such as readings, conclusions, assert that the Blessed Virgin was conceived in original sin, Extravagant "Grave nimis," concerning religion, etc., and Bull 97 of St. Pius V. (See number 244.)

7. Those who assault clerics (c. If anyone, by inciting, cause 17, question 4). Although this is well-known and contains much necessary knowledge, it will be treated in more detail below, at number 264.

8. Also, those who, persevering for a year in a general excommunication imposed by a delegate of the Pope, c. "Quærenti, de offic. deleg."

9. Those who offend Cardinals, c. "Felici, de pæn."

10. Those who demand taxes from ecclesiastical persons, c. "Clericis, de immun." in 6.

11. Those who violate an interdict in prohibited ways, Clement, "Gravis, de sent. exc."

12. Those who disembowel the bodies of saints, Extravagant 2, concerning burial.

13. Those who deceive people in apostolic letters, so that they may obtain their dispatch without charge, Bull of Leo X, 27.

14. Those who simulate and pretend to be others in order to obtain benefices from the Dataria, Bull 42 of Paul IV, among others.

15. Those who send letters or messengers to the Conclave, or who receive them from there, Bull of Pius IV, 63, concerning elections.

16. Those who occupy the property of churches, pious foundations, or other pious institutions, or who prevent those to whom it rightfully belongs from receiving it, Council of Trent, chapter 44, session 22, concerning reforms.

17. Women and men who enter the enclosures of monasteries of nuns under the pretext of licenses for non-essential matters, Bull of Gregory XIII, 28. Where grace is. See below, 32.

18. Those who seize and retain Christians living among the Turks, and who seize their property, or force them to convert, Bull of St. Pius V, 149.

19. Those who publicly announce indulgences, and who grant the faculty of choosing confessors to those who pay something, Bull of St. Pius V, 99.

[*Latin ed. p. 357*]

34. Those who receive or retain the fruits of vacant benefices, or who impede the possession of benefices by those to whom they are due, without paying the customary dues, or any other agreed sum, are subject to the Bull of the aforementioned Pontiff, number 104, which is exceedingly strict.

35. Those who seize animals and goods, or who purchase them from

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ecclesiastical property without authorization, are subject to the Bull of Gregory XIII, number 98, which states, "Not without reason."

36. Those who teach that sacramental confession can be made in the absence of a priest through letters, are subject to the Bull of Clement VIII, number 87, which declares, "Most Holy."

37. Those who remove grain, wheat, legumes, and oil from ecclesiastical property without permission, are subject to the Bull of Paul V, number 12, which states, "Among the most serious matters."

38. Those who teach or defend, even through disputation, opinions that have been condemned, are subject to the Decrees of the Holy Congregation and the Holy Office, which were issued in the years 1465, 1466, and 1690, number 249.

— "The following are considered offenses against clerics and religious:

4. Those who participate in the sacraments with excommunicated individuals, as decreed by the Holy See, number 2.

5. Those who procure the alienation of Church property.

6. Those who, under the pretext of interpreting Scripture, present a meaning different from that of the Doctors, especially concerning the time of Antichrist, the final judgment, and similar matters.

7. Those who are not parish priests and have not taken the oath of residence.

8. Mendicant friars who transfer to another order, except for the Carthusian order, as stated in Extr. Viam. de Reg.

9. Nuns who leave the cloister without permission, as stated in the Bull of St. Pius V, number 8.

10. Religious who, without a privilege or special permission from the parish priest, cleric, or ordinary, presume to administer the sacraments of the Eucharist or Holy Orders, or to celebrate marriages, as stated in the Bull of Clement IV, de privil. Also, number 8.

11. Those who induce others to swear an oath regarding the choice or the unchanging nature of a burial place in their churches, as stated in the Bull of Clement, Cupientes, §. Sane, de pæn.

12. Commissioners or delegates who introduce decrees through flattery, or fear, or by lot, in the alienation of Church property, or who fraudulently procure the alienation of property through others, are subject to the Bull of Paul II, number 2, which begins, "Concerning all matters."

13. Preachers who do not observe the decrees issued concerning them at the Lateran Council, are subject to the Bull of Leo X, number 21, which begins, "Concerning the aforementioned."

14. Those who, under the pretext of privileges, absolve individuals from cases reserved to the Holy See or to ordinary jurisdictions, are subject to the Decrees of the Holy Congregation, Episc. et Reg., issued by Clement

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VIII in the year 1604, number 42.

15. Those who consent to the usurpation of Church property, are subject to the Council of Trent, c. 14, session 22, de Ref.

16. Those who go beyond the sea without permission from their superiors, are subject to Extr. Ad nostrum, de Regul.

17. Superiors who do not report to the Inquisitors or ordinary jurisdictions religious who are suspected of heresy, are subject to the Bull of Paul V, number 26, Rom. Pont.

18. Minors who induce others to make promises or vows in elections, are subject to the Bull of St. Pius V, number 128, Pastoralis.

19. Cloistered religious who receive minors without the permission of the Pope, are subject to the Bull of Julius II, Virtute conspicuus, which is outside the Bulls.

20. Tertiaries who wear the habit of the Minor Orders, are subject to the Bull of Leo X, Liceat alias, which is outside the Bulls.

21. Bishops who grant benefices contrary to the prescriptions of St. Pius V regarding benefices that have been resigned in their hands, are subject to the Bull, number 50, Quanta.

22. Cardinals who surround the papacy.

[*Latin ed. p. 358*]

And concerning Simonians, by the Bull of Paul IV, number 46, "Cum secundum." Concerning Cardinals who are Simonians in the granting of benefices, by the Bull of St. Pius V, number 85, "Hodie in consistorio." Concerning judges, officials, laymen, and ecclesiastical prelates who bring ecclesiastical persons before the secular court, by the Bull of Martin V, number 40, "Ad reprimendas," as mentioned above. Concerning temporal lords who compel the celebration of divine services and the hearing of the divine office in their territories, under interdict, by Clement's decree, "Gravis, de sent. exc." Concerning officials and temporal lords who banish, or cause to be banished, ecclesiastical persons, by the Bull of Urban VI, number 3, "Quia sicut." Concerning officials, judges, and temporal lords who strike, or banish, bishops, or who order this to be done, or who ratify actions done by another, by Clement's decree, number 1, "De pæn." Concerning princes and temporal lords who grant a place, or permit a duel, in their territories, by the Council of Trent, session 25, chapter 49, "De Ref." By the Bull of Clement VIII, number 44, "Illius vices." Concerning bishops and inquisitors, and their substitutes, who, by action or omission, fail in their duty concerning those accused of heresy, by Clement's decree, "Multorum, §. Verum, de hæret." Concerning governors of cities and places who receive gifts, other than food, from ecclesiastical persons, by the Bull of Paul II, number 3, "Munera." Add: Concerning those who violate the enclosure of religious or nuns for a wicked purpose, by the Decree of the Holy Congre-

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gation of Councils, published by order of Clement VIII, November 22, 1722. Also, concerning men and women who enter the enclosure of nuns under the pretext of privileges, and those who cause or permit superiors to enter, by the Bull of Gregory XIII, "Ubi gratia," June 43, 1575. Also, concerning women who enter the enclosure of religious under the pretext of privileges; by the same Bull of Gregory XIII. Also, by the Bull of St. Pius V, "Decret. Romanum," July 46, 1570, all women who enter monasteries of religious, even without the pretext of privileges; and superiors, and anyone who presumes to introduce them, incur by that very act the loss of their offices, and are rendered incapable of holding those offices, and others, and are also suspended from the Divine Offices without further declaration. It should also be noted that Benedict XIV, in the Bull "Regularis," dated January 3, 1742, decreed that women who enter the enclosure of religious incur, by that very act, excommunication, both reserved. Even if they enter under the pretext of charity and religion. Add: Concerning those who defend as a lawful practice the acceptance of the name of a fellow conspirator in confession, either in writing or verbally; or who oppose decrees against such practice; or who rashly distort or interpret them in a foreign sense, by the Constitution "Ubi primum," of Benedict XIV, June 2, 1746. See at the end of this work. It is worthwhile to add more observations, especially concerning the two excommunications mentioned above, namely, number 248 to 43, and number 219 to 28, namely, against those who engage in duels, and against those who violate the enclosure of religious.

[*Latin ed. p. 359*]

220. — And concerning those who engage in duels, and those who assist in them, it should be noted that, from five propositions condemned by the Most Holy Pope Benedict XIV in his Constitution, which begins with "Detestabilem," published on November 13, 1752, it is not permissible to offer, or to accept, a duel, lest anyone be deprived of their office, even if from it they obtain sustenance for themselves and their own, or hope for a promotion that is due to them; nor is it permissible to accept a duel in order to avoid a pension, even if it is certainly assured that there will be no fighting; see other laws, book 4, number 400, question. It should be noted that, from the 25th session of the Council of Trent, chapter 49, those who engage in duels, their sponsors, those who incite them, and their followers are excommunicated; but also kings and lords who grant a place for duels in their territories; and these are deprived of their dominion over the territory; and those who engage in duels, and their sponsors, are deprived of their goods, and of ecclesiastical burial. Pope Pius V reserved this excommunication for the Pope; and Gregory XIII, in his bull which begins with "Ad tollendum," published in the year 4582, extended these provisions to private duels, even without sponsors, and to lords who do not prohibit them in their territories, and to all who assist in them. Finally,

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Clement VIII, in another bull which begins with "Illius vices," issued in the year 4592, imposed a papal interdict for places where duels are permitted by lords. See Salm, on ecclesiastical censures, chapter 4, page 3, number 42, and see the aforementioned law, book 4, number 404. But these penalties, besides excommunication, are not incurred unless after a declaratory sentence of the crime, as Sanch. Pal. and Salm, ibid., number 43, state. Note 3. By the term "spectators," it is not understood all those who watch a duel, but only those who, by their presence, go to the place of the duel, and assist in it, since in the bull of Gregory it is said "spectators" in the composite sense; hence, rightly, P. Milante, in proposition 2, condemned by Alexander VII, and Salm, ibid., number 43, state, that those who, passing by the place of the duel, happen to see it out of curiosity, do not incur excommunication. Indeed, Cont. Tourn. in the treatise on penance, part II, chapter 8, article 4, section 4, number 335, and Salm, in the same place, also state, that only those spectators incur [excommunication] who are associates of the combatants, or who, by their presence, seem to incite them to fight, but not those who watch from afar, or in secret, or in any other way that does not encourage the fight. Also, Salm adds, that those who accompany those who are about to fight, with the intention of preventing the duel, do not incur [excommunication]. Note 4. Although, according to the Council of Trent, and according to the bull of Gregory, those who provoke and accept a duel do not incur excommunication, if the duel does not take place, because both in the Council of Trent, and in the aforementioned bull, only those who commit the duel are excommunicated; nevertheless, in the bull of Clement, in the section "Furthermore" (which is fully quoted by Bon. d. 2, q. 6, p. 4, n. 3), those who provoke, whether by word or in writing, and those who accept a duel, are excommunicated, even if the fight does not take place, nor is there any approach or action leading to the fight; nor are those excommunicated who accompany, or are messengers, or who incite, or advise, or dictate provocative letters, or who write them.

[*Latin ed. p. 360*]

Those who force entry or restrain others, and in any way cooperate in a disturbance, incur excommunication publicly or secretly. It should be noted that, unless the disturbance is notorious or brought before a court of law, Bishops can validly absolve excommunicated individuals, by virtue of the authority granted by the Council of Trent in Session 24 of the Fifth Session. This is correctly noted by Salmeron in *De Censuris*, chapter 4, paragraph 3, number 45, along with Sanchez, Bona, Paleari, and others. However, Regular Canons outside the city, and within Italy, cannot, by virtue of their privileges, absolve from this excommunication; otherwise, within the city, or outside of Italy, they can, as decreed by Clement VIII, as we have mentioned (numbers 96, 224).

II. Regarding those who violate the enclosure of nuns or religious, it

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should be noted that those who enter the monasteries of nuns without written permission incur excommunication by the very act, according to Session 25, chapter 5 of the Council of Trent, concerning Religious Orders: "No one, of whatever kind, condition, sex, or age, may enter within the walls of the monastery without the written permission of the Bishop or superior, under the penalty of incurring excommunication by the very act." Only the Bishop or superior must grant permission in cases of necessity. Such entry is also prohibited to prelates, whether secular or regular, by the decree of Gregory XIII, beginning with the *Dubia* (cited by Barbieri, in the collection, page 102, number 43), published on December 23, 1584, under the penalty of interdict from the Church for secular prelates if they enter without a case of necessity for the first time, suspension from pontifical duties for the second time, and excommunication for the third time. Regular prelates, however, incur excommunication and deprivation of all office and ministry, even for the first time, as Sanchez and Decius hold in *Decretum*, book 7, chapter 46, number 402. Although Bona, volume 4, treatise on enclosure, number 44, along with Llamas, believes that it is probable that the penalties of excommunication and deprivation are incurred only for the third time. In a case of necessity, for the purpose of visitation, the aforementioned superiors may enter the monasteries of nuns; but then (as is stated in the same decree), they must be accompanied by a few, and by senior and religious persons. "A few" are understood to be four or five, as Bonacini and Victorinus believe. Religious, that is, persons of proven virtue. Tamburini, along with Victorinus, in *De Alexandro Confessione Monialium*, chapter 7, section 4, question 5, states that if the Bishop enters alone, or does not have elderly companions or non-religious persons accompanying him, or if he is not accompanied by a few, he would not incur the penalties; because the penalties only apply to prelates who enter without necessity. However, in the Constitution of Alexander VII (cited by Alexander, in the same work), it is held that if the General visits, he may have with him two members of his order who are exemplary and of mature age; if another is sent by the General, only one; and in addition, four nuns from among the seniors must be present to assist the visitor. These excommunications are not reserved; but there is a reserved excommunication for the Pope (as we have indicated) against those who violate the enclosure of nuns.

[*Latin ed. p. 361*]

Concerning the end which is detrimental, as is stated in the decree of the Holy Council, published by order of Clement VIII in the year 1602. How, then, is that "end which is detrimental" to be understood? Mazzola, volume 3, page 510, understands the end in any way that is wicked; but Pellizzarius, in the same work, understands it to mean only a lascivious end, because the purpose of the enclosure is to preserve chastity; and therefore,

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even access and conversation are forbidden. There is also another papal excommunication, reserved, issued by Gregory XIII on June 13, 4575, in the bull "Ubi gratia," against any persons of either sex, even counts, marquises, and dukes, who enter the monasteries of nuns, or women who enter the cloisters of religious orders, under the pretext of certain privileges supposedly granted there; and against all superiors of monasteries of either sex, who, in addition to incurring the reserved excommunication, also incur the loss of their offices and are rendered incapable of holding them, if they themselves enter, or allow someone else to enter, under the pretext of those privileges; and against abbesses or other superiors, if they have dared to admit anyone in any way, as declared by Paul V in another bull, beginning with the words "Monialium," found in Alexander, chapter 7, section 44, question 3. However, it should be noted that bishops and regular prelates, who enter monasteries for the sake of their office, or under the pretext of it, but without just cause, do not incur this reserved excommunication; for although all are included in this bull, in the bull "Dubiis," cited in the preceding number, issued after the bull "Ubi gratia," as mentioned above, bishops and regular superiors are excepted, as Fagnan rightly points out in book 5, chapter "Nuper, de sententia excommunicationis," number 38, against certain individuals. Furthermore, in the aforementioned bull "Dubiis," a different provision is made regarding the penalties for bishops and regular clergy, and the excommunication imposed upon them, if they enter for a third time without just cause, is not reserved; for Fagnanus proves that this was a new constitution with respect to the penalties, and not a declaration of the original bull. Finally, it should be noted that the Most Holy Pope Benedict XIV, most recently on January 3, 1742, in two bulls (which you will find at the end of this work, one beginning with the words "Salutare," the other with "Regularis"), confirmed all the constitutions of his predecessors, both those issued before and after the Council. And, significantly, in the bull "Regularis," he forbade any women from entering the cloisters of religious orders under the pretext of piety and religion; he only granted this to noble women of the families of the founders, or of distinguished benefactors, who have obtained an apostolic dispensation to enter, so that they may proceed directly to the church. Thus, the constitution of St. Pius V, beginning with the words "Decet Romanum Pontificem," (found in Holz, volume 4, page 480, number 592), remains in effect, in which it was permitted for women to enter the cloisters of religious orders for the sake of a procession, to hear Mass, or a sermon, or a funeral, or a large gathering. 222. — But question 4: Do those who enter the monasteries of nuns without permission incur the aforementioned reserved excommunication, if they do not...

[*Latin ed. p. 362*]

Concerning entry into convents under the pretext of affairs: Some main-

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tain that this is permissible, citing Alexander, book 7, section 41, question 2, along with Navar, Azor, Graff, and others, stating that, as it is said, the constitutions of Gregory XIII require it. However, it is more probable that Sanchez, in Decrees, book 6, chapter 16, number 79, and Bonaventure, on cloistered nuns, question 4, page 5, number 4, Suarez, on censure, book 22, session 6, number 41, Fagnan, in the same place, number 42, Holz, page 338, number 34, Mazzola, volume 3, page 521, number 3, and Barbos, in annotations, 102, number 37, along with Sayr, Rodriguez, Miranda, Sa, and Zerol, deny this, because it is expressly required in the aforementioned bull of Gregory that entry be under the pretext of affairs.

Doubt 2: Besides those mentioned above, do all those who introduce others into the cloister incur excommunication? Bonaventure maintains this, in question 4, page 7, number 3, and Alexander, book 7, section 44, question 4, along with Fill and Llamas, who state that those mentioned in the aforementioned bull of Gregory, whether they are superiors or other individuals, incur the aforementioned penalties by admitting outsiders into the cloister; and they say that the term "individuals" is a generic term, encompassing all persons. However, Sanchez, in Decrees, book 6, chapter 16, number 83, along with Manuel, and Diana, citing Alexander, object to this. The opposing reason holds true if the bull stated, "superiors and all individuals," but since it states, "superiors and individuals, whatever their name," it cannot be understood to include all religious who do not have a name distinct from that of religious, but rather it refers to superiors, who in different orders have different names, namely abbots, priors, guardians, correctors; and this was clearly explained by Saint Pius V in the bull concerning Regular Canons, cited by Bonaventure, question 5, page 3, number 2. Nevertheless, this does not preclude the decree of the Sacred Congregation of Bishops and Regular Canons, cited by Ferraris, volume 2, under "Convents," article 3, number 7, where it is stated with respect to the Friars Minor of the Observance, that if women enter their cloister, both superiors and subordinates who introduce them incur the same reserved excommunication, and remain, by that very act, deprived of their offices, and are unfit for future service.

Doubt 3: Does a license to enter the monasteries of nuns need to be in writing, with regard to the forum of conscience? Sanchez, in Decrees, book 6, chapter 16, number 50, Palafox, page 3, division 4, part 10, section 2, number 6, and Suarez, in Diana, paragraph 3, treatise 2, response 129, maintain that it does, because, without a written document, the license is null, since the form for granting it is prescribed by the Council of Trent, in session 25, canon 8, which states: "No one of any age or condition shall be permitted to enter within the enclosure of a monastery without the written permission of the bishop or superior, under the penalty of incurring excommunication by that very act." However, Homobon and Bellochius, cited by Diana, in the same place, object to this, citing Innocent and Felin.

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The reason is that a written document seems to be required only for the external forum; and this does not seem improbable, as we have said in a similar case, book 5, number 123, see Hhc. Diana, in the same place, along with Rodriguez and Villal, and Barbos, in annotations, 102, number 57, along with De.

[*Latin ed. p. 363*]

The matter of the Cross, which, according to the first opinion (although it still contradicts Sanch.), does not require a written authorization in ordinary cases, when the reason is manifest, such as in the case of a physician, confessor, or other worker entering, for the sudden needs of the nuns are often present, as explained in the Glossa v. Causa, in chapter "Periculoso," concerning the status of the Regular Canonesses, in question 6, number 4. Whether such authorization should be special? The answer is affirmative, so that it is not sufficient if it is granted to someone for any case to which the superior can grant it, as expressly stated in the aforementioned chapter "Periculoso," there: "Unless a special authorization, etc." However, Alexander, chapter 5, section 2, question 5, with Miranda, maintains that a general authorization is valid, so that all physicians, notaries, and similar individuals may enter, because, although it is general with regard to persons, it is nevertheless special with regard to the reason for entry. But I scarcely agree with this, because I believe that the aforementioned text and the Council require a special authorization, not only so that the superior may know the ministry of those entering, but also the qualities of the persons, namely, whether they are men of good character, of mature age, and the like. However, the prelate can generally entrust the abbess, or a confessor, or another prudent man, with the power to grant authorization to others to enter, as will be said in the following question at the end. 224. — Question 5. By whom should authorization be granted to enter the monasteries of nuns? If the monasteries are subject to the Bishop, it is certain that it belongs to him to grant authorization by his own authority; or delegated, if the monastery is immediately subject to the Supreme Pontiff, as in the Council of Trent, session 25, chapter 5. Sanch., Decrees, book 6, chapter 15, number 30, and Bonaventure, "De clausura," question 4, paragraph 2, number 2, with others, probably teach the same, concerning prelates who have jurisdiction as if they were bishops, and concerning General Vicars of military orders, because these are truly ordinaries, or at least are included by name among ordinaries, as the same Sanch. demonstrates in "De Matrimonio," book 3, title 29, number 35. But can a General Vicar of the Bishop grant this authorization? Alexander, chapter 7, section 2, question 2, denies it, unless he has a special mandate from the Bishop; and Barbarius, in "Annotations," 102, number 38, cites Bonaventure in the aforementioned place; but Bonaventure does not say this there, so that Sanch., Decrees, title and number 30, with Navar and Llamas, quite probably teaches that, in

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monasteries subject to the Bishop, the General Vicar can properly grant authorization without a special mandate. This is demonstrated 1. By the Motu Proprio of Pope Pius V, beginning with "Decori," where the Pope explains that the Bishop, or another local Ordinary; but the General Vicar of the Bishop is properly called an Ordinary, and by name is already included in all decrees, as the same Sanch. demonstrates in "De Matrimonio," book 3, title 29, number 10 and 35. 2. By reason, because the Bishop proceeds with ordinary authority in monasteries subject to him, but the General Vicar (as Fagnan demonstrates).

[*Latin ed. p. 364*]

l. 4. in c. (For in the office of the delegate, no. 45, concerning Imola, etc., and the same Sanchez, decree of May 29, no. 16.) He can do everything that the Bishop can do concerning ordinary jurisdiction, because he acts as one with the Bishop in the tribunal. However, it must be said differently concerning what the Bishop can do concerning delegated jurisdiction, and therefore Sanchez rightly states in his Decrees, no. 30, that a General Vicar in monasteries subject to the Apostolic See cannot grant permission without a special mandate from the Bishop. However, when the See is vacant, the chapter can certainly grant permission in monasteries subject to the Bishop, because he succeeds to all that belongs to Bishops by ordinary right. But the difficulty is, can he also do so in those that are subject to the Apostolic See? Some, in Alexander, chapter 6, § 2, question 2, with Moller, Palafox, Barbos, and Tamini, affirm that such jurisdiction is perpetually committed to the episcopal office by delegation from the Apostolic See, and therefore, since it belongs to the Bishop by office, it rightly passes to the chapter, or its Vicar. Sanchez, in his Decrees, does not approve of this reasoning, no. 30. However, he concedes it for another reason, because (as he says) the intention of the Council is that the chapter should be able to grant permission, so that monasteries do not remain without a prelate to whom they can appeal for permission. A greater difficulty is, from whom should permission be granted if the monastery is staffed by Regular Canons? In Alexander, chapter 7, § 2, question 4, it is argued that permission should be granted both by the Regular prelate and by the Bishop, citing a decree of the Sacred Congregation, issued by the Council on November 13, 1610. However, Fagnan, in his Decrees, book 5, chapter "Nuper," no. 47, and Bonaventure, question 4, paragraph 2, no. 3, with Rodriguez, Graff, and Miranda, Croix, book 4, no. 76, with Palafox and Piasecki, and Barbos, annotation 102, no. 44 (citing the opposite decree of the same Sacred Congregation, which he himself saw, issued in the same year that he was writing, namely around the year 1628), and Sanchez, in his Decrees, book 6, chapter 46, no. 43, with Azor, Manuel, Llamas, and Navarro, teach something different (as Sanchez reports), and it is also said to have been declared by St. Pius V, namely that permission can and must be granted by the

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Regular prelate alone, that is, by the General or Provincial (or even by the immediate superior of the monastery, as Sanchez, no. 15, and Bonacich, in the same book, with others cited by him, believe, contrary to Alexander, in the same book, question 2, and Suarez, cited by him). The reason is that the Council of Trent prohibits entrance without the permission of the Bishop or superior; therefore, speaking disjunctively, it declares that permission can respectively be granted either by the Bishop or by the Regular prelate, depending on to whom the monastery is subject. However, Alexander, in his Decrees, question 2, citing a decree of the Sacred Congregation of May 21, 1630, approved by Urban VIII, states that permission should be granted solely by the Bishop, even in the case of exempt monasteries, where such a custom prevails. However, the Abbess cannot, by ordinary right, grant this permission, as Alexander, chapter 7, § 2, question 2, and Sanchez, no. 22, with Navarro, Azor, Manuel, etc., state (contrary to some cited there, no. 21). However, the Bishop can certainly delegate the Abbess, or a confessor, or another prudent man, to

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This permission must be granted, as Bonaventure states in *de Almavivaria*, p. 2, no. 5; in *de Alexandro*, chapter 7, section 3, question 2; Sanchez, no. 23; and Navarrelius, Graffius, and Barbosus, chapter 7, no. 53, against Suarez, 225.

Doubt: What reason is required to grant this permission?

Response: Not every reason suffices to grant permission; necessity is required, as prescribed by the Council of Trent, Session 25, chapter 5, in these very words: "But the Bishop, or superior, must only grant permission in cases of necessity." This necessity must arise from the side of the monastery itself, because entry is permitted solely for the benefit of the monastery; it is not sufficient if the necessity arises only from external factors, unless natural or divine law dictates otherwise, as Bonaventure commonly states in *de Almavivaria*, question 4, p. 4, no. 8, and in *de Alexandro*, chapter 7, section 3, question 2, based on a declaration of the Holy See from September 9, 1614. Therefore, Diana states in *Tractatus de Matrimonio*, part 3, reply 30, based on another decree of the Holy See, that wives who are still entering the monastery with the permission of the Ordinary, due to adultery or disagreement with their husbands, do not incur excommunication, although the Holy See rarely grants such permission. Similarly, permission is not valid to place a woman in the monastery to prevent her from vomiting, as stated in *de Alexandro*, chapter 7, section 3, question 2, based on another decree of the Holy See from August 18, 1588. Nor is permission granted to teach the nuns an art, unless there is no other skilled person present in the monastery; as stated in *de Alexandro*, chapter 7, section 3, question 2, based on another decree of the Holy See from March 44, 1586. However, Pignatelli, in *Tractatus de Matrimonio*,

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volume 7, conclusion 47, no. 42, and *de Alexandro* itself, ibid., based on a decree of the Holy Congregation, state that the Ordinary can rightly grant permission to a girl about whom there is a dispute to remain in the monastery temporarily, until the dispute is resolved. Such a necessity is understood to arise from the side of the monastery, not strictly, but broadly: it is understood as a moral necessity, namely, when any reasonable cause, or one that is probably just, intervenes; thus, Sanchez, *Decisorum*, book 6, chapter 16, no. 4; Bonaventure, question 4, p. 4, no. 2; *de Alexandro*, chapter 7, section 3, question 1, with Delbene; and Barbosus, *Tractatus de Matrimonio*, conclusion 102, no. 48, with Miranda, Portel, and Campanile. It is said that the cause is probably just, because a cause that is merely possibly just is not sufficient, as Sanchez and Barbosus rightly point out. Furthermore, (contrary to Bonaventure), they believe that a lesser reason is required for the entry of a woman into a monastery of nuns than for a man; and for daytime entry, than for nighttime entry; and for the entry of a relative, than for an outsider; and for entry into the outer areas, than into the inner areas. However, in urgent necessities, which do not allow for delay, and where other serious harm would result, no permission is required to enter, as in the case of death, fire, violence, and the like, because human law does not obligate in such a circumstance, as Sanchez, no. 34, and *de Alexandro*, chapter 7, section 2, question 6, with Navarrelius, Graffius, and the common opinion, rightly teach. Therefore, any priest can enter in the case of sudden death to administer the sacraments of Penance, or the Eucharist, and even Extreme Unction, as *de Alexandro* probably states. And then, even the permission of the abbess is not required.

[*Latin ed. p. 366*]

It is probable that the same opinion is held by Alexander, question 7, with Navagius, Graffius, and others (against Sanchez, number 36), because at that time, a license is reasonably presumed to be granted immediately by the Pope. However, this is an exception unless the abbess has a general faculty from the prelate to grant the license.

226. It should be noted that a physician cannot enter unless he has a license renewed every three months, as stated in the decree of the Sacred Congregation issued on March 27, 1588 (see Alexander, chapter 7, section 5, question 4). Furthermore, he must be accompanied by two senior nuns; and he may only enter alone if his infirmity is very grave. However, a physician cannot enter at the beginning of Lent to determine which nuns require dispensation, because this can be readily accomplished by others, as stated in Alexander, ibid., question 2. Nevertheless, he may enter to examine a nun lying in bed, who is uncertain whether she is suffering from a fever; although she herself could, without serious harm, approach the door if she were reluctant to go there out of modesty. Thus, Bonaventure, question 4, page 4, number 5, and Alexander, de eccl. d. q. 2.

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A physician who is not regularly employed cannot enter the cloister at will, but only in the absence of a regular physician, or when a consultation is to be held with the regular physician; as stated in Alexander, question 3, with Barchius. A surgeon may enter to draw blood, and a pharmacist may also enter to instruct (if necessary) on how to prepare a medicine; as stated in Sanchez, book 6, chapter 46, number 59, and in Alexander, question 4. Notaries, clerks, and similar individuals may also enter if necessity requires, for example, to assess the danger of a collapsing building, to find a necessary document in the archives, or to draw up a will for a young girl; as stated in Alexander, question 5. Similarly, craftsmen, gardeners, builders, whitewashers, pruners, millers, and others may enter with the permission of the superior, if they cannot conveniently practice their trade outside; also, porters to carry items that the nuns cannot carry themselves. However, if a license has been specifically granted for one porter, another cannot take his place unless the license was indefinite, e.g., "a porter may enter"; as stated in Alexander, question 7, and Sanchez, chapter 46. Sanchez also admits tailors, if they cannot conveniently fit clothes outside; and Cassian agrees if there is a need; but Bonaventure, question 4, page 4, number 44, and Palearius, book 4, page 40, section 3, number 44, rightly deny this.

Furthermore, if a license has been granted for a master of a trade with a student, can the student enter, or remain, without the master? Barchius, in Alexander, section 5, question 8, denies this, unless the master is unable to enter, or remain, due to some impediment. Others affirm this, and Alexander considers it probable, because the word "with" is equivalent to the word "and."

Can infants who are not yet capable of reason be admitted into the cloister? Barbatus, with Navagius, Azor, Bonaventure's commentary, etc., affirm this, because the prohibition primarily applies to those who enter; since, therefore, infants are not bound by the precept due to the lack of the use of reason, nor are the nuns themselves. However, the Sacred Congregation has frequently declared the opposite; see Alexander, question 41, loc. cit. And this is even more true of lunatics, from whom, moreover, the danger of scandal can easily be feared.

[*Latin ed. p. 367*]

227. — May the confessor enter to administer the sacraments of Penance, the Eucharist, and Extreme Unction to a religious sister who is seriously ill and unable to come to the confessional? And not only in danger of death, but also whenever the rule permits Communion, as well as whenever she is accustomed to receiving Communion; thus, Bon. q. 4. p. 4. n. 4; Barb. all. 12. n. 49; and de Alexand. cap. 7. §. 6. q. 2, with Sanchez, Rodriguez, and the common opinion, according to a declaration of the Sacred Congregation; however, the confessor must enter wearing a surplice and stole, and must remain there; he must also leave, without going to any other part of the

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monastery, even if it were to visit another sick person who does not require the sacraments; see de Alex. q. 2 and Barb. d. n. 49. A secular confessor must enter without an assistant, as the Sacred Congregation declared; a religious confessor, however, must have an assistant of proven virtue and mature age, according to the bull of Alexander VII. While the confessor is hearing confessions, companions should be present at the door, so that they can see him; see de Alex. ibid. The confessor may also enter and stay overnight in the monastery if a religious sister is in extreme danger; see de Alex. §. 6. q. 3, according to a declaration of the Sacred Congregation. He may also enter to bless the monastery from being infested by evil spirits; see de Alex. qu. 9, with Nav. Nald., according to a declaration of the Sacred Congregation. Whether he may perform an exorcism on a possessed religious sister, the Sacred Congregation approved on November 10, 4582, if the priest is of proven virtue; but later, on July 1, 4606, it forbade this, and stated that it is better to obtain permission from the Sacred Congregation to have the religious sister exorcised in the church outside the monastery; see de Alex. ib. q. 5. The confessor may also, after administering the sacrament, give a relic to be kissed, bless the cell, etc., and may even speak about some temporal matter at that time; thus, de Alex. o. 7. §. 6. q. 9. Many hold, according to de Alex. qu. 10, from the Glossa in c. Decret., that if an extraordinary confessor, entering with a license granted for a single occasion, is unable to hear or complete the confession due to illness, he may enter again later without another license. And they say the same if the religious sister, after confessing, immediately calls the confessor who has left, to mention a sin that she has forgotten, since it pertains to the same judgment. Furthermore, de Alex. states that after the confessor has heard the confession of a sick religious sister, he can properly bless a new building in the monastery, and may also bring a significant relic to another sick person; and also, it says, that for a just reason, he may remain in the monastery for a short time to see the workshops, and to deal with some temporal matter.

228. — Doubt 7. Does one who enters the monastery with permission incur excommunication, or commit a grave sin, if, after finishing the business, he does not immediately leave? Answer 1. He does not incur censure, even if he stays for a long time, because the enclosure is violated only when entry is taken without permission; thus, Sanch. Dec. l. 6. c. 16. n. 60. Bonac.

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Q. 4, p. 5, n. 22, and Bordon, Zerola, apud de Alex., c. 7, § 3, q. 4. And this, as Sanchez states in the aforementioned work (against Rodriguez), occurs even if someone is drawn to a wicked end, because here one has already entered with permission, as the Council permits. But Bonae, in the aforementioned work, believes that this does not incur excommunication by the Council of Trent, but does incur excommunication reserved by the Pope, as stated in the decree of the Holy See, issued by order of Clement

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VIII on November 22, 1622, where all those who violate the enclosure for a wicked end are excommunicated; for this one, he says, already violates the enclosure by delaying with a wicked intention; but to this it can be replied that, when speaking of penalties, that violation must be strictly understood, as the Council understands it, namely, of entering and exiting without permission.

Resp. 2. On the contrary, one is not excused from mortal sin if the delay is long, because one is acting against the obligation of the enclosure; otherwise, if the delay is brief, since in this precept, a small amount of matter is well tolerated; thus, generally, Sanchez and Bonae in the aforementioned works, and Barb., in allocution 102, n. 56, with Miranda and Rodriguez. Indeed, Sanchez, ibid., and Mol., Rodriguez, and Miranda, apud Bonae, say that he who delays only a little is also excused from venial sin, both because it is customary even among those of timorous conscience; and because, since this precept is moral, the delay should be understood in a moral sense. In this, Diana, p. 3, tract. 2, r. 54, with Villal., considers a brief delay to be a quarter.

Dubit. 8. Does one incur excommunication who enters with permission, and for a just cause, but at the same time with a wicked intention? Bonae, d. 4, p. 5, n. 48, believes that it is probable that this incurs excommunication, because it is not presumed that the superior granted permission in that case. But de Alex., c. 7, § 3, q. 5, holds the opposite, and rightly considers it probable, as does Bonae, with Rodriguez and Zerola, to whom Sanchez, l. 6, c. 46, n. 68, and c. 47, n. 28, also adheres, that censure is only inflicted on those who enter without permission, but not on those who enter with permission, even if with a wicked end; for the penalties are to be strictly understood, and a wicked intention does not remove the primary reason for which permission was granted.

229. Nuns who violate the enclosure, as well as others who allow them to violate it, or who accompany them, or who receive them, incur excommunication by the Pope, as stated in the Constitution of St. Pius V, which begins, "Decori," issued on February 4, 1569, apud Sanchez, Dec., l. 6, c. 44, n. 35, where an exception is made for egress if there is a just cause, namely (as it is said there) a great fire, or infirmity, leprosy, or epidemic. But the Holy Congregation, apud de Alex., c. 7, § 9, q. 2, declared that by the name "epidemic" is meant only the true and real plague. But Bonae, qu. 1, p. 9, n. 2, Holzm., t. 4, p. 480, n. 592, and Sanchez, l. c., n. 35, with Nav., Manuel, and Cenedo, say that not only the truly pestilent disease, but any contagious disease that is likely to infect others, is to be understood, such as the disease of St. Lazarus, sacred fire, and the like, in the case where a nun is infirm and cannot...

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It is to be taken care of in a monastery without the danger of infecting

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others. This is inferred from chapter "Periculoso," concerning the status of religious, paragraph 6, where it is forbidden for a nun to go out, unless it should happen that she is evidently suffering from some disease, so that she cannot remain with others without grave danger or scandal. Conversely, it is rightly stated by Bona, loc. cit., number 48, with Rodriguez, Zerola, Gutt, and Cord, and Barbos, alloc. 102, number 20, with Miranda, Sorbon, and Cenedo (against Navar, Azor, Suar, and Graff), that it is not sufficient for a nun to go out due to a serious illness without the danger of infecting others, both because this case is not excepted in the Constitution of St. Pius, and because otherwise, a great damage would follow to the enclosure, since such illnesses are frequent in monasteries. However, Sanchez, chapter 45, numbers 60 and 64, and Bona, number 21, teach that a nun, once cured, or when the reason for her departure ceases, must immediately return. However, it is rightly understood that this must be understood morally; therefore, the nun is excused from a mortal sin if she delays for one or two days. Furthermore, Sanchez, chapter 46, number 69, states that she does not incur excommunication if she remains outside, because she has already gone out with permission. Although in chapter "Periculoso" mention is made only of the cause of fire, etc., as mentioned above, nevertheless, Sanchez, chapter 45, numbers 37 and 44, Bona, numbers 6 and 7, and Alexander, chapter 7, § 9, question 2, with Navar and Barbos, state that it is sufficient to go out for similar reasons, such as an impending war, a flood of the river, or the collapse of a building. However, when the opportunity and time are apparent, that is, if the danger admits of delay, it is absolutely required, according to the aforementioned bull of St. Pius V, to obtain written permission from the Bishop, and also from the regular prelate, if the monastery is exempt, as it is stated there: "And let this cause be known, proven, and expressed in writing by the superiors, and also by the Ordinary." Does a nun incur excommunication by going outside the monastery even for a single step? Graff, Naldini, and Merolla deny it. Croix adheres to this in book 4, number 85, and book 4, number 673, if she returns immediately. However, it is more probable that Bona, quaest. 4, p. 8, number 6, and Sanchez, book 6, chapter 16, number 70, affirm it. However, it is very reasonably excused if, as Sanchez states, the nun does not go outside the enclosure with her whole body. It should be noted here from the decree of Clement VIII (in Pell, chapter 7, question 7, number 22) that each nun must sleep alone, and therefore, there must be as many cells in each monastery as there are nuns living there. The same was declared by the Sacred Congregation of Bishops and Regular Canons, in Ferrar, Bible, volume 5, article "Moniales," number 2, number 7. Likewise, the Sacred Congregation of Bishops and Regular Canons, in the same Ferrar, book cited, article 4, number 5, has repeatedly decreed that girls staying in monasteries of nuns, for the purpose of education, must have a separate place from the nuns for their sleeping quarters, as well

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as for their work. 230. — This concerns the enclosure of nuns. There is also another excommunication reserved to the Pope against women who violate the religious enclosure.

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The penalty, established by St. Pius V in the bull *Regularium*, dated 4566, and in another document by Gregory XIII, *Ubi gratia*, published on June 43, 1575, as cited by Bon. de claus. q. 5. p. 3. n. 1, Salm. tr. 15. c. 5. p. 8. §. 1. n. 176, and Spor. t. 3. p. 100. n. 459. This excommunication applies not only to women who, under the pretext of certain permissions, enter monasteries of men or women, as declared by Gregory XIII, but also to those who enter such convents without such a pretext, as stated in another bull issued on July 16, 1570, which begins with the words "Romanum Pontificem." St. Pius V himself declared, saying: "We declare that our intention is that the aforementioned documents should not only include women claiming to have permission to enter monasteries, but also any others, both in general and in specific cases, etc." And so, it is commonly and correctly held by Pal. tr. 16. d. 4. p. 8. n. 1, Suar. de rel. tr. 8. l. 1. c. 7. n. 9, Bon. l. c., Nav. c. 27. n. 105, and Salm. l. c., with Lex. Poll. Gare., etc. (contrary to Laym. Delb. etc.). This is also taught by Sanch. Dec. l. 6. c. 46. n. 79, who, along with Suar., states that the authorities were protected from this error because they did not read the aforementioned declaration by St. Pius V. Nor does the objection raised by Laym. ibid. and Delbens apud Salm. n. 175, namely that since Gregory XIII only renewed the previous constitution of St. Pius V, *Regularium*, mentioning only women entering under the pretext of permissions, the second constitution of St. Pius V, *Romanum Pontificem*, either was not promulgated or was not accepted. It is answered that the aforementioned second constitution was included in the Bullarium of St. Pius V, and that from the style and layout of the Penitentiary, it is sufficiently shown that the aforementioned second constitution had already been promulgated and was in use. Furthermore, it should be noted that, according to the bull of Gregory, *Regularium*, especially for superiors, in addition to the penalties of suspension from the sacraments and deprivation of offices, and the inability to perform other duties, as stated in the bull of St. Pius V, they also incur excommunication if they themselves enter, or allow women under the pretext of permissions, to enter their monasteries. But do the Regulars incur excommunication if they admit women entering without a pretext? Fill. tr. 15. o. 5. q. 7. n. 449 and Bonao. p. 3. n. 2, deny this, believing it probable because St. Pius V had already declared his intention that the first bull included women entering even without a pretext, but Gregory XIII did not declare this. 231. — However, exceptions are made to this prohibition for I. Queens, electresses, and similar individuals, and their daughters, as taught by Suar. de censur. d. 22. sect. 6. n. 12, Sanch. l. 6. c. 17. n. 9, and Bon. q. 4. p. 2. n. 5. II. Foundresses who have granted land, or

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the site of a monastery, or who have built it with their own funds, or have endowed it with revenues: to these, a suitable retinue is also permitted; Spor. l. c. and Elbel n. 650. However, this was declared by Pope Benedict XIV in the bull *Regularis* (which can be found at the end of this work), provided that they have a privilege from the Holy See.

[*Latin ed. p. 371*]

In the form of a Breve, and these shall be presented to the Ordinaries, or prelates of the monasteries, of the places. III. Women are necessary for the care of a religious (understood with the permission of the superior): or those who flee to avoid death, Sporer and Elbel, loc. cit. They say that, according to Pal. tr. 16, d. 4, p. 4, n. 6, and Elbel p. 642, with Sanoh, Laym, and others, they do not come to private homes, or residences, where one or another religious is accustomed to live, because these cannot be called gatherings. Nor do they come to homes, adds Elbel, where religious live for the purpose of building a monastery, unless there are sufficient accommodations there, so that the community can already live there regularly. Furthermore, Elbel, n. 671, with regard to the manner of maintaining enclosure, states that legitimate customs and reasonable ones must be observed, approved by the authority of the superiors: not those which are rather to be called abuses and corruptions. Barb. Bonac. etc. say that the sacristy of the regular canons is an enclosure; but P. Ferraris (Bibl. verb. Convent. n. 14.) asserts that the practice is almost everywhere the opposite. 232. — Here, however, he reports more to be noted concerning the prohibition enacted by law, and in a reserved case in the diocese of Naples, regarding men speaking with nuns. For this, it should be known that in the Council of Lateran in the year 1479, as it is found in c. Monasteria, de vita et honestate cleric., a wide excommunication was decreed by the Bishop against laymen, and suspension for clerics frequenting monasteries of nuns, with these words: "Monasteries of nuns, if any cleric should presume to frequent them without manifest and reasonable cause, let him be restrained by the Bishop, and if he does not desist, let him be declared incapable of ecclesiastical office; if laymen, let them be subject to excommunication." However, the Glossa in the cited c. Monasteria, believes that the frequency is constituted by two times, that is, in one day, or two consecutive days, as Gratian says. But it is more commonly held by Nav. and Manuel that the frequency is constituted by three times in three consecutive days, as also Sanch. Dec. l. 6, c. 16, n. 22, and Bon. de claus. t. 1, q. 3, p. 2, n. 4, or by one time each month, as the same Sanch. and Bon., or four times in the same week, as Bon. says, who adds, contrary to Nav. and Manuel, that it is not a constituted frequency; if it is four times in a year, or once in a quarter. In this last case, however, Barb. all. 402, n. 70, says that the Bishop can excommunicate those who come, if he wishes. Furthermore, for the regular canons, access to speaking with nuns had already been specially forbidden

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in the VIII. Synod, in the year 787, as it is found in c. Definimus 21, caus. 28, q. 2, where: "Adultery is to be prevented, if a monk has access to a nun secretly and individually for conversation." Furthermore, in the decree of the Sacred Congregation, published by order of Sixtus V. in the year 4590, a penalty of deprivation of office, of the active and passive voice, is imposed on regular canons who speak with any nuns, whether of their own order, or of another order, or with any woman living in the monastery.

[*Latin ed. p. 372*]

By that very fact, it is incurred. However, it was forbidden for regular confessors to stay overnight in the dwellings of the nuns – in the monastery buildings adjacent to them – or to arrange for others to stay there, or to keep anyone with them; also, to take food there outside of the times of general confessions. And this law truly obligates under a mortal sin, as taught by Bonaventure, Quest. 3, p. 4, n. 4, with Sayr, Homilies, and Barchius, and Ciera, d. 6, n. 26, v. "Verum," and by Potesta, Verricelli, Donato, Llamas, and Manuel (contra Nav. et Pal.), from the decree of the Sacred Congregation, published on July 1, 1626, where it was declared that regular clergy approaching the monasteries of nuns contrary to the form of the aforementioned decree would incur the penalty of mortal sin, in addition to the penalties prescribed. Also, it should be noted that in the aforementioned decree of Sixtus V, it was stated that regular clergy could only obtain permission from the Sacred Congregation to converse with nuns; but the same Sacred Congregation, in another decree (extensively quoted by Bonaventure, Quest. 3, p. 4, n. 4, and by Ciera, d. 6, n. 26), concerning the mandate of Urban VIII, dated November 20, 1623, granted local Ordinaries the power to grant permission, as they deemed fitting in the Lord, to each regular, up to four times per year, to meet with and speak to nuns who are related to them by blood in the first or second degree. However, this is not permitted on feast days, or during Advent, Lent, on Saturdays, or on vigils: and the aforementioned permission, obtained from the Ordinary, and from whoever is authorized to grant it, must be assigned to the regular confessor of the monastery, who must retain it, and who must be present; and the usual listeners, and not others, must be present: and the aforementioned permission must be granted for a specific day and hour, and must be noted in the books of the Chancery of the same Ordinary. If the Ordinaries grant or allow permission in any way other than by observing the aforementioned form, they know that they are transgressing the intention of the Holy Fathers. But the regular clergy, if they have not obtained permission as prescribed in the aforementioned decree (that is, the decree of Sixtus V), must consider themselves subject to the penalties contained therein. But after I have written these things, I have found that, when the question was raised before the Sacred Congregation, whether regular clergy, by approaching to converse with nuns without the permission of the Bishop, commit a mortal

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sin, even if they do so for a reasonable cause? The Sacred Congregation, on November 26, 1682, as is recorded in Monacelli, vol. 1, Appendix, p. 436, responded that it is not permitted without the permission of the Bishop. And the same is recorded in the bull "Gravissimo," issued on October 34, 1749, by Benedict XIV, in which it is stated that it was forbidden for regular clergy to approach the monasteries of nuns without the permission of the Bishop, nor even for the nuns themselves. With these things established, it seems that today regular clergy (whatever other decrees may have previously established, which have fallen into disuse) can lawfully approach as many times as they wish to converse with nuns with the permission of the Bishop. These prescriptions are concerning common law; in almost all cases, however...

[*Latin ed. p. 373*]

In Naples, there is a reserved case concerning those who speak with nuns without the license of the Archbishop or the Religious Superior, whether with nuns in monasteries, even with examples, or with any or some of them, even if they are converts or novices, or are staying there for the purpose of education or another reason; this applies only to those who are related by the first or second degree of consanguinity. It is declared that those who have obtained permission to speak with any of the aforementioned cannot, through their actions and deliberately, speak with others. Furthermore, (those) are excommunicated, especially those who, with any of the aforementioned, whether present in monasteries, or in conservatories, or colleges, have acted with obscenities through words or impious acts, or, if absent, through letters or messengers. Also, men or women, whether inside or outside the walls of a monastery or conservatory or college, who have delivered such letters or messages.

233. — Doubt 4. Does this prohibition only forbid access without conversation? Sanchez and Dea, book 6, chapter 46, paragraph 442, and Bonaventure, on religious life, book 3, page 4, paragraph 3, with Navar and Rodriguez, state this. Hence, they say that access to the monastery is forbidden, even to see the nuns. But it is more probable, as stated by Alexander, chapter 7, section 10, question 4, from Janarius and Jordan, that formal access, that is, access with effect, is forbidden; therefore, the prohibited access implies two things jointly: to access the place, and to converse; thus, it is clearly understood from the aforementioned. We define that, in this case, both access and conversation are simultaneously prohibited; and from the decree mentioned above, concerning the mandate of Sixtus V and Urban VIII, it is always mentioned jointly of access and conversation. Hence, it is probably stated by Diana, page 3, part 2, paragraph 48, from Alexander, book cited, with Lezini, Tamburrini, and Janarius, and Bonaventure agrees, book cited, paragraph 2, with Graff and Homobono (contrary to Merolla and Pasqual), that, speaking of itself, it is not forbidden to converse with

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nuns from a nearby house, because access is lacking; nor even to write, as stated by Bonaventure, book 3, page 2, paragraph 5, Mazzola, volume 3, page 534, and from Alexander, ibid., with Barbos, Riccio, Tamburrini, Janarius, and others. Thus, it is also not forbidden to converse through a messenger, as stated by Bonacich, page 4, paragraph 2, with Graff and Homobono, and Mazzola, in the place cited, with Quarti, Janarius, and Diana. I said, speaking of itself, because, according to the reserved case in Naples, as Ciera notes, book 6, paragraph 26, and Mazzola, page 523, note 4, those who converse from nearby houses, and even those who speak with a nun who does not respond, are excommunicated; there, indeed, not only those who converse are excommunicated, but simply those who speak; also, all those who are absent, who with a nun, or another person residing in a monastery or conservatory, have acted with obscenities through letters or messengers.

234. — Doubt 2. Do those who speak through gestures or signs, which are not obscene,

[*Latin ed. p. 374*]

Do such conversations constitute a reserved case? Mazzotta affirms this in volume 3, page 534, along with Quarti, January, Graff, and Baucio, because the concepts are clearly manifested to the other, both by words and by signs. However, Mazzotta himself, along with Pelliz, Tambur, and Diana, considers the opposite to be more probable, for speech through signs is not properly speech; and prohibitions are to be understood strictly, as if they were odious.

235. — Doubt 3. Is it a mortal sin to converse even once with a cloistered nun? Speaking of common law, Sanch. Dec. book 6, chapter 16, number 420, along with Navarrus, believes that even those who frequently, and without just cause, converse with cloistered nuns do not necessarily commit a mortal sin, unless they fail to cease after a warning from the Bishop. However, Bonaventure, in *De clausuris*, question 3, page 3, number 4, and in *De Alexandro*, chapter 7, section 10, question 2, along with Miranda, Rodriguez, and others, citing a decree of the Holy See from July 4, 1606, state that those who frequent such monasteries, although they do not incur penalties unless after a warning from the Bishop, are nevertheless not excused from mortal sin, because in the decree of the Holy See (published as mentioned above by order of Sixtus V), a very severe penalty is imposed, which is not usually imposed except for a grave fault. But this can be answered by saying that this was only established concerning religious orders. Speaking now of the reserved case in our diocese, there is no doubt that anyone who, even once, converses for a noticeable period with a cloistered nun commits a mortal sin, as Mazzotta well says in page 343, and Ciera states in distinction 55, number 9, along with January and Quarti: for there, it is not the frequentation itself that is prohibited, but the conversation

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itself.

236. — Doubt 4. Is there a lack of sufficient matter in such a conversation? *De Alexandro*, chapter 7, section 10, question 3, denies this, and proves it from the decree of the Holy See published on May 4, 1669, approved by Innocent IX, which states: "The Holy Congregation of the Council of Trent, having knowledge that some religious are not hesitant to visit and frequent monasteries of cloistered nuns without permission, claiming that it is not prohibited, even for a short time, to converse with the nuns for a quarter of an hour or even less; to eliminate such pernicious errors, and disapproving and condemning the aforementioned opinion, it is declared that religious who, although subject to their own rules, access monasteries of cloistered nuns without legitimate reason, and who converse with the nuns, even for a very short period of time, commit a mortal sin, and that they can be coerced by the Ordinary, as delegate of the Apostolic See, with the penalty of excommunication, deprivation of active and passive voice, and other established penalties." Therefore, from these words, *De Alexandro* infers that there is no lack of sufficient matter in such a conversation. However, Bonaventure, in *De clausuris*, question 3, page 3, number 4, Diana, page 3, treatise 2, rule 48, note 6, Mazzotta, page 534, along with Quarti, Vericius, and Tambur, and Ciera, distinction 6, number 9 (along with January), commonly state that a lack of sufficient matter must be admitted by all in this case: and rightly so, for even in divine precepts, there is a lack of sufficient matter that excuses from mortal sin, unless...

[*Latin ed. p. 375*]

It is commonly taught by Doctors that in any small matter, the entire malice of sin can be found, as in the case of perjury, carnal relations, and simony. However, the Authors disagree in assigning what constitutes a "small matter" in such a conversation. Ciera, in his work, with January, considers a few words to be a small matter, while Merolla, in the same work, believes it to be ten words. Diana, and Mazzuchelli, believe it to be the space of one "Miserere," and somewhat more. Finally, Quarti, and Vericelli, apud Mazzuchelli, say it to be one-quarter. It does not seem (as de Alex. believes) that this opinion was rejected in the decree of Clement IX; for although conversation is prohibited by any small amount of time, it is declared only for religious, to whom conversation with nuns is indeed strictly forbidden. Nor does it seem entirely that, as Ciera believes, the opinion of Quarti, namely that one-quarter is a small matter, was rejected there; for there, the opinion was truly not condemned, except the opinion of one-quarter with half an hour, with those words: "Those who claim that there is no prohibition for a short time; even up to one-quarter of an hour with half." The proposition was condemned conjunctively, namely, that it is a short time, even if it extends to one-quarter of an hour with half. However, if someone were to converse many times over many days with

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a nun for a continuous period, even if not noticeable in itself, it would be difficult to excuse him from mortal sin and excommunication; because such conversations, although not physically, seem morally to be joined together.

237. — Doubt 5. Is it permissible to converse with a nun out of necessity, or spiritual benefit, without permission? Diana, page 3, treatise 2, section 104, and Lezincani, January, Peyrin, Bordone, etc., apud Mazzuchelli, page 534, affirm this, because it is not presumed that a prelate would wish to impede the spiritual progress of nuns; just as he can converse with an excommunicated person, so too with a nun. But Ciera, in his work, number 8, and I entirely agree with him; for if it were permitted to others to speak with nuns for this reason of spiritual benefit without permission, it would harm the common good, since many would be deceived, and therefore the common good should be preferred to the private. Furthermore, in our case, the end of the prohibition is rarely adequately (nor even in particular) achieved, because there is easily a danger in such a conversation that both the person speaking and the nun may be caught in some affection, and their conversation may become carnal. Hence, the Holy Congregation rightly decreed on November 26, 1632 (as reported by Benedict XIV, in "De Synodo," book 4, chapter 42, number 23), that no honest and reasonable cause excuses a religious from a grave sin, who converses with a nun.

238. — Doubt 6. Is it permissible to speak with an abbess without permission? Diana, page 5, treatise 2, section 49, note 3, and page 10, treatise 14, section 49, with Vivaldi and Zambello, Pellizzari, chapter 5, number 208, Mazzuchelli, page 536, also Lezincani, Tamburini, and January, apud de Alex., chapter 7, section 10, question 5, and Felix Porti affirm this.

[*Latin ed. p. 376*]

Testimony, p. 2, no. 4477: Because the name of the monks does not indicate that an abbess is present, as the Glossary on chapter "fin." concerning Simony states, and as is mentioned in Panorm. ad Carden. apud Diana, book 1, chapter 1. They deny this concerning Alexander, book 1, chapter 0, with Megala, Calderin, and the Roman Rotæ, book 6, no. 41, with Graff and Meroll. The reason is twofold: first, because the aforementioned prohibition is not odious, but rather is favorable, since it greatly promotes the spiritual progress of the nuns; second, because in the decree of the Holy See, published by order of Sixtus V, mentioned in no. 232, it is forbidden to speak not only with nuns, but with any person living within the cloister, and in the constitutions of Alexander VII, "Saerosancti" (cited in de Alex., book 1, question 5), such conversation is also forbidden even with abbesses, prioresses, etc. But despite these considerations, I do not dare to disapprove of the first opinion, especially because abbesses are most often chosen from among the older and more prudent members, and they frequently have a need, due to their office, to deal with outsiders. Regarding the decree of Alexander, Potesta, book 1, chapter 0, states that it was specific to the

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Roman region, perhaps due to particular circumstances arising there. Furthermore, with respect to the City [of Rome], it is expressly stated that it includes even abbesses. Therefore, if the Pope, when he wished to include them, expressly mentioned them, then when they are not mentioned, they are not included; otherwise, it would have been necessary to expressly mention them.

239. — Doubt 7. Who are exempt from this prohibition? The following are exempt: 1. Those who are related by blood in the first and second degree, as stated in the case of Naples, which is reserved. Ciera, book 6, no. 5, believes that those who are related by blood in the second and third degree are also exempt, because in matters of this nature, a favorable interpretation must be given. But I do not agree with this opinion, for those who are in the second and third degree are truly not in the second degree; for the second degree is counted in relation to the monastic, but in relation to the person speaking, it is in the third degree, according to a rule that is doubted by no one, namely, that blood relatives are as many degrees apart from each other as the degree is removed from the ancestor. 2. Those who, driven by serious necessity, honestly speak with the nuns, because in such circumstances, ecclesiastical law does not obligate; this is a common principle, see Ciera, no. 20. 3. The poor and those who publicly seek alms, by custom and by tacit permission of the superiors. And so also, servants who are delivering gifts, and who briefly explain themselves; see de Alex., book 1, chapter 7, section 10, question 14, and Mazz., question 534, with Pelliz.

240. — Doubt 8. Are young boys exempt from the prohibition of speaking with nuns? There is no doubt that they, if they were capable of deceit, and if they engaged in such conversations, would not be excused from sin, since the prohibition in chapter "Monasteria," on the life and honesty of clerics, includes all. However, in those dioceses in which conversation is prohibited under pain of excommunication reserved to the Ordinary, are young boys exempt? Graff denies this; but it is truer to affirm, as de Alex., book 1, chapter 7, section 10, question 9, states, with Bon., Diana, and others, from "Pueris," on the delicts of boys, that...

[*Latin ed. p. 377*]

Boys are not to be punished as adults. And this is certain in the diocese of Naples, where boys under the age of 14 are expressly exempt from reserved cases.

241. — Doubt 9. Do religious men who converse with nuns incur a latently imposed excommunication by the Bishop? Four opinions are presented:

The first opinion absolutely denies this, citing Diana, Law IV, and Merolla in Ciera, book 6, number 24, because, although Bishops proceed concerning the enclosure of nuns according to the decrees of the Council of Trent, session 25, chapter 5, as delegates of the Apostolic See, there is

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no mention of the power to impose censures against religious men.

The second opinion, completely opposed, is held by Navarr, Graff, and Campanil, in Barbos, collection 102, number 73, and is adhered to by Ciera, number 26. It states that all religious men, even those with special privileges, incur a latently imposed excommunication by the Bishop.

The third opinion, held by Januar, Duard, Fagund, and Riccius, in the same place, Ciera, number 25, distinguishes and states that they do not incur this if the monasteries are subject to the Bishop, because when the Bishop proceeds in his ordinary jurisdiction over them, the religious men are not subject to him; otherwise, if they are exempt, because in these cases the Bishop proceeds as a delegate of the Pope.

The fourth opinion is the most common, and the one to which I adhere more closely, and is held by Sanch, on marriage, book 7, chapter 33, number 23; Barbos, collection 103, number 73; Bon, on enclosure, question 3, page 4, number 8; Fagnan, book 4, in "Quanto," deprivation, number 9, and in "De Alex.," chapter 7, section 10, question 12, along with the decree of the Sacred Congregation of April 9, 1583. It makes a different distinction, stating that if religious men have a special privilege that prevents them from being excommunicated or suspended by Bishops (as is the case with Mendicant orders, as stated in the "Compendium Privilegium," section "Exemptio," numbers 9, 23, and 24, and with the Religious of the Society of Jesus, as stated in the bull of Paul III in 1549), they do not incur a latently imposed excommunication by the Bishop; otherwise, if they lack such a privilege.

This is proven by the bull "Inscrutabile," issued on February 5, 1522, by Gregory XV, in which it is stated: "In addition, both secular and religious men cannot be protected by any privileges or exemptions from being punished and corrected by the local Bishop, as if he were a delegate of the Apostolic See, whenever and whenever it is necessary, for offenses committed against those within the cloister, or concerning the enclosure, or concerning the administration of the goods of monasteries of nuns, even those subject to the rules; and this applies to religious men as well."

Therefore, it follows that religious men who are not endowed with a special privilege incur a latently imposed excommunication by the Bishop if they converse with nuns, whether the monastery is exempt or subject to the Bishop; because even in this case, the Bishop proceeds against the religious men as a delegate of the Apostolic See, otherwise he would have no jurisdiction over them to punish and correct them, as stated in the bull.

Otherwise, it must be said that religious men who enjoy a special privilege are exempt; for such a privilege must imply that they cannot be sub-

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jected to such penalties.

[*Latin ed. p. 378*]

The Bishop, even as a delegate of the Apostolic See, must proceed in a certain manner, because, since regular orders are ordinarily exempt from the jurisdiction of the Bishop, when the Bishop acts against them, he must always proceed as a delegate. However, it must be understood that if the privilege was granted after the bull of Gregory, and not before; as the bull states, that they may not enjoy any privileges or exemptions, etc. 242. — Doubt 40. Do traveling confessors conversing with nuns in a foreign diocese incur an excommunication reserved to that place? There are three opinions: The first opinion absolutely affirms this, and all the cited authors in book 4, chapter 332, at the end, hold this view, stating that even a traveler remaining in a place for a short time is subject to that Ordinary. The same opinion is held by Alex. c. 7, § 40, q. 40, and Ciera, book 6, chapter 31, but for different reasons, which, in my judgment, are not persuasive. The second opinion, held by Januar, in "De Casibus Reservatis," section 34, number 24, and Donatus in "Prax." 4, on access to nuns, treatise 6, question 22, number 8, states that traveling confessors are subject to the jurisdiction if the monasteries are exempt, because in these cases, according to the 25th session of the Council of Trent, chapter 5, the Bishop acts as a delegate of the Pope, and therefore, even the traveling confessors are subject to him. Conversely, if the monasteries are subject to the Bishop, because, according to the same Council of Trent, in these cases the Bishop exercises ordinary jurisdiction, to which traveling confessors, remaining for a short time, are not subject, as held by the more probable opinion, as stated in book 4, on laws, number 456. The third opinion, held by Pelliz, "Diana," and others, as cited by Mazz., page 536, which does not disapprove, states that traveling confessors remaining somewhere for a short time do not incur a broad excommunication by the local Bishop, whether the monastery is subject to him or exempt, for the reason mentioned above, because traveling confessors are not bound by the laws of the place. They do not object to the fact that, according to the Council of Trent, Bishops act as delegates of the Pope concerning the enclosure of exempt monasteries; for this applies only in relation to the restoration and preservation of the enclosure, which is not relevant to a simple conversation. But this opinion is rightly contradicted by Januar, in "De Casibus Reservatis," section 34, number 49, and Fag., book 5, in "Quanto, De Privilegiis," numbers 45 and 46, because access for conversation, according to the opinion of the Doctors, pertains to the enclosure, and this is inferred from chapter 4 of "De Statu Regul." (renewed by the 25th session of the Council of Trent, chapter 5), which states: "No entrance, or access (note), shall be allowed to these places, so that they may be entirely separated from public view and worldly distractions, and may more freely serve God, and that, with the opportunity for temptation

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removed, their hearts and bodies may be more diligently guarded in all holiness." Therefore, not only entrance, but also access, is prohibited with regard to the enclosure, because access also provides an opportunity for temptation for the nuns, and prevents them from guarding their hearts more diligently for God. And therefore, Bishops in exempt monasteries act as delegates of the Pope.

[*Latin ed. p. 379*]

Delegates, because, as such, they are designated by the Council of Trent concerning the enclosure of nuns, as declared by the Sacred Congregation in Fagnan, book 1, chapter 34. However, despite this, as will be stated shortly at the end of the following paragraph. See *Sed quidquid*. Doubt 44. Do Bishops who converse with nuns in a foreign diocese incur a major excommunication from the Ordinary of that place? It does not seem doubtful, because, according to chapter *Periculoso*, paragraph 6, of the collection on the status of religious orders, even Bishops are prohibited from conversing with nuns outside their own diocese, or even within it, except where it is stated that no entrance or access is permitted to them. For nowhere is it held that Bishops, or even Cardinals, are exempt from common laws, as taught by Bonaventure in *De Legibus*, book 4, question 1, paragraph 6, number 35, with reference to the Roman Registry and others; and this is said with Ugolino. Regarding excommunication, Mazzoni, volume 3, page 534, at the end, and Daniel and Graff, in *De Alexand.*, chapter 7, section 40, question 6, deny that Bishops incur it, because the law does not bind equals, according to the chapter *Cum inferior*, on major and ecclesiastical matters. But de Alexand. states, with others, that Bishops in foreign territory are considered private persons, according to Panormitan and others; therefore, they are subject to the same penalties as others; and thus, de Alexand. refers to a decision by the Sacred Congregation, in Navarr, on May 20, 1649, 243. But whatever the aforementioned Doctors have said, it must be concluded today that both outsiders and Bishops sin by approaching to converse with nuns residing in a foreign diocese, but they do not incur excommunication; for in the *Gravissimo* bull of Benedict XIV, issued on October 34, 1749, it is stated that both Bishops and outsiders are subject to the constitutions of the Ordinary of that place with regard to directive authority, but not with regard to coercive authority; therefore, although they sin, they do not incur penalties, because Bishops and outsiders are not subject to the authority of the Ordinary of Bishops: And since (the words of the bull) they are least subject to the jurisdiction of the Ordinary of Bishops, and therefore are immune from penalties. The reason is that, although Bishops are apostolic delegates concerning the enclosure of nuns, their jurisdiction is ordinary, as if perpetually annexed to the episcopal office, according to what is stated in law 6, number 594.

DISSERTATION On the censures concerning the Immaculate Concep-

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tion of the Blessed Virgin Mary. 244. Above all, it is worthwhile to review the various bulls issued by the Supreme Pontiffs on this matter. And I. Status IV, in his *Extravagantes*, in the section *Cum præcelsa*, which is found in the 6th Decretal, *Extravagantes*, with reference to relics and the veneration of the Saints, says as follows: *Cum præcelsa*.

[*Latin ed. p. 380*]

The insignia of merit, by which the Queen of Heaven, the Virgin, Mother of God, as a path of mercy, Mother of grace, friend of piety, comforter of the human race, for the salvation of the faithful, who are burdened by the weight of sins, diligently prays and vigilantly intercedes with the King whom she bore, we deem it due that all the faithful of Christ should offer thanks and praise to the Almighty God for the wondrous conception of His immaculate Virgin, and that they should say and participate in the instituted Masses and other divine services for this purpose, etc. Therefore, the Holy Father grants the same indulgence to those who say Mass and participate in the Office on the feast of the Conception of Mary, and during the octave, as they would gain on the feast of Corpus Christi. The same Pope, in the following Decree, "Grave nimis," under the same title, issued in the year 1483, imposed excommunication upon those who, in sermons or otherwise, assert that her Most Blessed Virgin Mary was preserved from original sin, or who celebrate the Office of the Conception, or hear such sermons. And likewise, those who hold, or read, the same books, as mentioned above, asserting these things, are excommunicated. Conversely, those who assert that it is heresy, or a grave sin, to hold the opposite opinion are also excommunicated. II. Saint Pius V, in his Bull, number 144, issued in the year 1570, beginning with the words "Super speculam," decreed: "That no one, of whatever order, rank, etc., shall presume to dispute, in public sermons, or wherever a mixed multitude of men and women are accustomed to gather, on either side of this controversy, asserting his own opinion with reasons or the authority of Doctors, and refuting, or impugning, the opposite, or to write, or dictate, in the vulgar tongue, about this question..." Whoever does this shall incur the penalty of suspension by divine law; if he is established in the sacred ministry, he shall be deprived of his office, dignity, and administration; and he shall be subject to the censure of perpetual inability to hold or perform similar duties; unless he is dispensed from or absolved by the Roman Pontiff. Furthermore, it is permitted for learned men to discuss this question in public academies, where those who can understand the matter are present, provided that nothing erroneous is preached. In addition, Saint Pius V ordered that the Office of the Nativity be recited on the feast of the Conception of the Most Blessed Virgin, changing the word "Nativity" to "Conception." III. Paul V, in his Bull, number 97, issued in the year 1616 (as reported by the Most Illustrious Bishop of Torni in the Annotations to Estius, book 2, district 3, section 2), forbade, under the penalty of suspension,

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and with other provisions contained in the Bull of Saint Pius V, that anyone, of whatever condition, etc., in public readings, sermons, discussions, and other public acts, should assert that the Most Blessed Virgin was conceived in original sin. Furthermore...

[*Latin ed. p. 381*]

Likewise, the Holy Father commanded, under the same censures and penalties, that those who hold the negative opinion, namely, that the Most Blessed Virgin was not conceived with original sin, in the aforementioned public acts, should not assert any other opinion, nor should they in any way act or treat concerning it. Pope Gregory XV, in his bull issued on the 29th day of the year 1622, which is cited by Bonacorsi in volume 3, treatise 3, question 6, page 4, number 2, extended this prohibition, and commanded all, under the same penalties, as mentioned above, that they should not even in sermons and writings dare to assert that the most blessed Virgin was conceived with original sin: nor should they in any way act or treat concerning this affirmative opinion. However, by this, his Holiness does not intend to condemn this opinion, nor to prejudice it in any way, etc. However, this Pope granted the Brothers of the Order of Preachers permission, so that in private conversations or conferences among themselves alone, and not with others, they may discuss the affirmative opinion, without any censure. Finally, there was added the constitution of Alexander VII, *Sollicitudo omnium Ecclesiarum*, issued in the year 1664 (which is cited by the most illustrious Torni in the *Annotations*, as mentioned above, in the same place), where the Holy Father begins to speak as follows: "It is the ancient piety of the faithful of Christ towards His most blessed Mother, the Virgin Mary, that they feel her soul, from the very first moment of creation, and of its infusion into the body, to have been endowed with a special grace and privilege of God, in view of the merits of Jesus Christ, her Son, the Redeemer of the human race, preserved immune from the stain of original sin, and that, in this sense, they celebrate the feast of her Conception with solemn rites." And it has grown, and this worship has increased, after the apostolic constitutions issued by our blessed predecessor, Pope Sixtus IV, in his commendation, which the Holy Council of Trent renewed. Then he adds: "This piety and worship towards the Divine Mother has again increased and spread, so that even in the most celebrated academies, almost all Catholics embrace it." Then he continues and renews the decrees of Sixtus IV, Paul V, and Gregory XV, issued in favor of the opinion asserting that the soul of the Most Blessed Virgin was endowed with the grace of the Holy Spirit at her creation and infusion into the body, and preserved from original sin, as well as in favor of the feast and worship of the same Divine Mother, exhibited according to this pious opinion, and commands that they be observed under the penalties and censures contained in those constitutions. Furthermore, all those who interpret these constitutions in

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such a way as to frustrate the favor of said opinion, and of the feast and worship exhibited according to it, or who bring up this same opinion, or this same worship, into discussion, or who speak, preach, treat, or assert anything against it, directly or indirectly, under any pretext, in writing or in speech, are forbidden.

[*Latin ed. p. 382*]

Furthermore, those who have dared to present arguments against it, leaving the matter unresolved, or who have discussed it in any conceivable way, besides the penalties contained in Constitution Sicti IV, are deprived of the faculty of preaching and publicly teaching, and are also, by their very act, silenced both actively and passively in all elections. Moreover, Alexander VII forbade the publication of books in which the aforementioned opinion is questioned, or in which the feast or cult according to that opinion is called into doubt, or in which anything is written or read that is contrary to it, in any way, as mentioned above, after the decrees of Paul V were issued, and forbade their publication in any way, under the penalties and censures contained in the Index of Prohibited Books, and ordered that they be considered expressly prohibited without further declaration.

245. — From this, the following are inferred: First, one incurs the penalties imposed upon those who would assert that the affirmative opinion can be defended, namely, that the Conception of the Blessed Virgin was tainted; or who would present reasons to prove it, unless they present those reasons to be answered, because this would not be dealing with the affirmative opinion, but with a pious opinion opposed to it, so that its truth may be more clearly demonstrated, as we will explain more fully shortly.

246. — Second, one also incurs penalties for asserting that the feast of the Conception is to be celebrated, because the Virgin was sanctified in the womb of her Mother; for in this way (as rightly says Bonaventure), one would clearly assert, by necessary consequence, that the Divine Mother was conceived in sin, and subsequently sanctified; for sanctification necessarily presupposes the absence of sanctity. Moreover, since Gregory XV ordered that the faithful should use only the word "Conception" in the Mass and in the Office, it is all the more clear. Furthermore, Alexander VII expressly forbade, in the aforementioned bull, that the favors granted to the pious opinion, and to the feast according to it, be frustrated, or interpreted, or called into doubt in any way, directly or indirectly, under any pretext whatsoever. But what favor could have been granted to the pious opinion, if the term "Conception" could be understood to mean the sanctification of the Blessed Virgin in a state other than that of her first Conception? And although "Conception" might be understood in the most improper way as meaning sanctification; for in this way, even St. John the Baptist and Jeremiah could be said to have been conceived sanctly; nevertheless, this improper interpretation was certainly forbidden by Alexander VII in his

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Constitution, under the penalties contained therein.

247. — Third, one also incurs penalties for transcribing the affirmative opinion, in order to indicate that one adheres to it; for this would at least be dealing with that opinion. Fourth, by the very act of transgression, one incurs suspension from the Divine Offices, and also (as Bonaventure holds, more probably, against others) incurs unfitness for office. It is true, however, that one does not incur the loss of dignities, etc., unless after the judgment of a judge. Fifth, the aforementioned penalties are not only incurred by those instituted in the Sacred Orders, as prescribed by St. Pius V, but also by all, whether ecclesiastical or secular, as the law extends.

[*Latin ed. p. 383*]

Paul V and Gregory XV. VI are subject to these penalties. Only the Pope can remit these penalties; and the Bishop, when the offense is concealed. 248. — As for those who hold the opinion of the Immaculate Conception, they are indeed forbidden to condemn the opposing opinion under the same penalties, and to assert the pious opinion as a dogma of faith. However, they are not forbidden to prove it with reasons and authorities; for although St. Pius V, in his bull, forbade discussing either side of this controversy in public sermons, it is permitted to assert one's own opinion by means of reasons or authorities, and to refute the opposing one; and furthermore, Paul V, in another bull cited in n. III, ordered those who defend the pious opinion to not oppose any other opinion in public acts, nor to deal with it in any way, with these words, it seems that these Popes forbade refuting the foundations of the opposing opinion; nevertheless, it must be said that either the aforementioned bulls are not widely accepted in this regard, or that the praised Popes intended to speak only of those who defend the pious opinion, as if it were a dogma, according to the words that St. Pius adds in the aforementioned bull; or that they forbade only directly opposing the contrary opinion, but not indirectly by resolving arguments; or finally, it must be said that these same bulls were moderated by the latest bull of Alexander VII, where it is openly permitted to resolve arguments against the contrary opinion. 249. — Although it is not permitted to defend the pious opinion as a dogma of faith, it is certainly permissible for us to assert that it is true and common, as stated in Salmanticenses, Tract. 20, c. 9, n. 12; Abolly, in his Med. Theolog., Tract. de Incar., cap. 7, sect. 3. Indeed, it can be called morally certain and nearly definable as a matter of faith, as held by Vivain, q. Prod. ad Trutin., and in his Cursus theolog., schol. part. 8, p. 8, disp. 1, q. 2, n. 7, along with Velasquez and Sifilino; as also held by Raynaud, in his Pietas, Auct. Coronæ Virgineæ, Prop. 102; Platellius, part. 2, num. 353; Franc. Peyrin, in his theol.; Edmundus Simonet, in his Instit. theol., t. 1, p. 353; Cardin. Everard, in his Exam. theol.; Lossada, in his Disc. Theolog. super defn. Immac. Concept. Duvallius also holds this view, 1. 2, quæst. ult. de peccatis, where he concludes: "I believe it is better to say that

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our opinion is at the peak of theological certainty; and that it lacks nothing for the assent of faith, except for an explicit definition of the Church." 250. — Thus, fortified by so many authorities, even I, the least among them, assert this, and I will briefly prove it here. I indeed do not intend to deviate from the decrees of the Popes, to which I obediently subscribe, but only to promote reasons for the pious opinion here, in order to clarify the mind of someone who might hold the opposite view. Indeed, it seems to me that the pious opinion, although not yet declared as a dogma of faith, is today as clear as the midday sun.

[*Latin ed. p. 384*]

251. — I omit demonstrating it through revelations which others allege. For it is found that the Blessed Virgin revealed to Saint Bridget in book 6, chapter 42, volume 2: "Every sin of Eve was separated from me." And in chapter 49: "And it is true that I was conceived without original sin." And in chapter 45. But know that my Conception was not known to all; thus it pleased God that my friends should piously doubt about my Conception, and that each should show their zeal, until the truth became clear in due time. Aliam recounts a revelation made by Saint Thomas Aquinas to the Venerable Dominic of Jesus and Mary, General of the Discalced Carmelites, namely that it was revealed to him that a council would take place to define the Immaculate Conception of the Blessed Virgin. However, Suarez and Vasquez assert that, in disputation 179, paragraph 3, number 78, against those who despise the aforementioned revelations as mere female fantasies on this point, they state: "To call revelations the fancies of women is truly a reckless act." And a little earlier, they said: "Bonaventure spoke more cautiously about the revelations of his time, not daring to reproach those who celebrate such a feast because of the revelations made." Peter Canisius also wrote in this manner: "Nor should we scorn those revelations which deserve the faith of the good, and which confirm the doctrine of the Conception." For we know that it is written: "Do not quench the Spirit." (1 Thessalonians 5:19).

252. — Moreover, the defenders of this pious opinion do not intend to vindicate its certainty solely from these revelations; stronger arguments exist to prove it, as I will briefly explain. It is proven I. from Scripture, and especially from that passage (Song of Songs 4:7): "Thou art all fair, O my love, and there is not a spot in thee." This passage is understood literally concerning the Blessed Virgin, and from it, Saint Idelphonsus and Saint Thomas, in 3 questions, chapter 27, article 4, prove the immunity of the Blessed Virgin from all actual sin. Therefore, if from this passage it is proven that the Blessed Mary did not incur any actual sin, it also follows from the same passage that she did not incur any original sin, otherwise she would not be "all fair." Thus, the "Idiota" (in Contemplations of the B.V., chapter 3) says: "Thou art all fair, most glorious Virgin, not in part,

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but in whole, and there is no spot of sin, whether mortal, or venial, or original, in thee." Also, what does it signify that the Angel said to Mary: "Hail, full of grace, the Lord is with thee?" What does it signify that Elizabeth said: "Blessed art thou among women?" What does it signify that the Blessed Virgin herself said: "He hath done great things for me?" Unless it is because she alone among women is blessed because of the curse of original sin, and among the great things that God has done for her, this is the greatest privilege (which was denied to the angels and to Adam): and she has been adorned with divine grace, that is, never stained by the stain of sin, always a friend of God, and united to Him through her grace. This is what Saint Augustine expresses in Sermon 14 on the Nativity of Saint Dominic, concerning the words: "Hail, full of grace," where the Saint says: "He shows..."

[*Latin ed. p. 385*]

From the very beginning (note this from the very beginning), excluding the anger of the first judgment, and restoring the full grace of blessing. The adversaries object with the words of the Apostle to the Romans, 5: "All have sinned in Adam." But it is answered that this argument is too strong, because it would prove that it is a matter of faith that the Blessed Virgin was immaculate, which no one says, nor can say. Therefore, this Scripture must be understood with the exception of the Blessed Mary; for in Scripture it is also universally asserted: "For there is no just man upon earth, that doth good, and sinneth not." 2 Paralipomenon 1:2. "In many things we offend all." James 3. And yet it is a matter of faith, as declared by the Council of Trent, Session 6, Canon 23: The Blessed Virgin committed no actual sin.

253. Proof II. From the bulls of the Popes; for Sixtus IV, in his bull, "Cum præcelsa," speaking of the Conception of Mary, says: "Of the wondrous Conception of the very immaculate Virgin." Why wondrous, unless she was immaculate? The same Pope approved the office of the Blessed Virgin, composed by Leonard of Nogarole, where the Immaculate Conception is mentioned not once, but several times, and it is asserted that the Virgin was, through the merits of Christ, preserved from all stain from the very beginning. Then Paul V expressly ordered that the faithful, in the Mass and in the office of this feast, should use no other name than "Conception." From this, it seems certain that the Pope commanded this in order to eliminate all ambiguity, so that under the name of "Conception," the sanctification of the Virgin in the womb after the first moment, as the adversaries understood it, could not be understood. But most importantly, the bull of Alexander VII, as stated above, declared that the feast of the Blessed Virgin is celebrated not for the sanctification after the first moment, but for the preservation from the stain of original sin in the very first moment of her Conception, according to pious belief. And from this, the Pope prohibits all contrary interpretations, directly or indirectly, under any pretext, even of charity.

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254. Proof III. From the councils. I omit the Council of Basel, in which it was decreed that the pious opinion should be held. Although, with regard to this council, some rightly note that, although Eugene IV approved it, he nevertheless, as Raynaud says, wanted the decrees of the council to be considered valid, which did not touch Eugene himself, nor the authority of the Pope. In the Seventh General Synod, Act 5, it is stated: "If anyone does not confess that the Holy and ever-Virgin Mary is truly and truly the Mother of God, and is superior to all visible and invisible creatures, let him be anathema." How could the Blessed Virgin be said to be superior to all creatures, even angelic ones, if she had ever been cleansed from original sin, by which she was not only once inferior to all angels, but was entirely devoid of grace, and hostile to God?

255. Furthermore, the Council of Trent did not explicitly declare the pious opinion to be a matter of faith, but in Session 5, Canon 5, it only said: "However, this Holy Synod declares that it is not its intention to include in this decree, where original sin is discussed, the blessed and immaculate."

[*Latin ed. p. 386*]

The Virgin Mary, Mother of God, must be honored, and the constitutions of the blessed and venerable Pope Pius IV must be observed, under the penalties contained therein, which He innovates. But it must be noted in passing what Jerome testifies in the Prologue 3 of his commentary on the Song of Songs: that he himself read the entire session of Trent in Rome, where this matter was discussed, and that almost no one, except those of the Order of Saint Dominic, gave their support to the opinion against the Immaculate Conception. Lancici adds in volume 1, Opusculum 14, chapter 43, page 49, that the Council finally concluded that the Blessed Virgin was conceived without original sin; but due to the insistent prayers of some theologians of the Order of Saint Dominic, the Council postponed the decree to a later time.

Although Trent did not issue this decree at that time, it nevertheless expressed our certain opinion in another canon that it promulgated. In canon 23 of the 6th session, it stated: "If anyone shall say that it is possible for a man in his whole life to avoid all sins, even venial ones, unless by a special grace of God, as the Church holds concerning the Blessed Virgin, let him be anathema." From this canon, it certainly follows that the Mother of God was exempt from original sin, for, as Father Coninck rightly argues in his Theology, and Spinellus in his golden book on the Blessed Virgin, if it is certain, according to the Council and according to the faith, that the Divine Mother did not commit any actual sin, it necessarily follows with theological certainty that she did not contract the stain of original sin. The reason is clear: just as it is impossible for one who has contracted original sin together with its root to be free from all actual sin; so too, it is necessarily impossible for one who has committed no actual sin to have contracted the

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stain of original sin, as taught by Saint Augustine in book 5 against Julian, chapter 9, where he said that Christ the Lord did not commit any actual sin because He did not contract original sin.

Probability IV: It is false to say that all the Fathers held the opposite opinion. Indeed, Bellarmine in his Controversies on the Loss of Grace, book 4, chapters 45 and 46, interprets the Fathers who seem to hold the contrary opinion, and he cites many who support the pious opinion, among whom Saint Ambrose can rightly be included, who wrote in Psalm 448, at the last verse: "Receive me, not from Sarah, but from Mary, that the Virgin may be incorrupt, but a Virgin by grace, free from all the taint of sin." Saint Anselm in chapter 42 to the Corinthians: "All are dead in sins, whether original or added by the will, with no one absolutely excepted, except the Mother of God." Saint Peter Damian in his Sermon on the Assumption: "The flesh of the Virgin, taken from Adam, did not admit the stains of Adam."

To these and others is added the common sense of the faithful; for Aegidius à Presentatione in his work on the preservation of virginity, question 6, article 4, testifies that all religious orders protect the Immaculate Conception. And from the same order of Saint Dominic, although there are 92 writers who argue to the contrary, there are 137 who support the pious opinion, as some more recent writers enumerate. Pope Alexander VII, in his...

[*Latin ed. p. 387*]

The bull, as mentioned above, declares that this opinion is held by the most renowned academies, and by almost all Catholics. Petavius, in volume 5, page 2, line 44, chapter 2, number 40, strongly argues in favor of this, and rightly concludes, as the most learned Bishop Torni states in his notes on Estius, that certainty about the fact that the Virgin Mary was sanctified, at least before her birth, is derived from the common belief of the faithful. From this, we are certain that the same Blessed Virgin was taken into heaven, both in soul and body. Therefore, if no one doubts these things, how can one doubt the Immaculate Conception, which is held and defended by all the faithful?

Opponents cite the authority of St. Bernard and St. Thomas. But our position is strengthened by these very saints. Although St. Bernard, in his letter to the canons of Lugdunum, had warned them that they should have awaited the authority of the Apostolic See before celebrating the feast of the Conception of the Virgin, and he added that the day of the Nativity and the Assumption of the Blessed Virgin should be devoutly celebrated, since this had already been accepted by the Church; nevertheless, as Bellarmine rightly notes in book 3, chapter 46, of *De Cultu SS.*, it follows that if St. Bernard were to see the feast of the Immaculate Conception celebrated today by the authority of the Roman Church, he himself would gladly celebrate it.

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As for the teaching of St. Thomas, it is true that it is still uncertain what opinion St. Thomas held. Although he seems to express a different view in the *Summa*, in several places, especially in his letter to the Galatians, chapter 3, reading 6, he clearly states that the Virgin Mary was conceived immaculately, writing: "But I do not find a woman who was entirely free from sin, at least from original or actual sin, except the most pure and most worthy of all praise, the Virgin Mary." More clearly, in the first part of the *Sentences*, distinction 44, article 3, ad 3, he wrote: "It must be said that purity is understood as a removal from the contrary; and therefore, something created can be found that is purer than anything else in created things, if it has not been contaminated by any stain of sin; and such was the purity of the Virgin Mary, who was free from original and actual sin." With these words, (as Bishop Torni notes in the aforementioned passage), it is very clear that St. Thomas, in this place, understood that the Blessed Virgin was free from original sin, since those words admit of no other interpretation. In the *Summa*, and if St. Thomas, in question 27, article 2, ad 3, says that in the feast of the Conception, the feast of sanctification is celebrated rather than the Conception of the Virgin, because at that time there was doubt as to whether the feast celebrated was of sanctification in the womb, or of Conception at the very beginning; but today it has been declared, as we have said, by the bull of Alexander VII, that the feast celebrated is not of sanctification, but of the Conception of the Blessed Virgin, preserved from original sin. Furthermore, St. Thomas, in article 4 of the aforementioned question, where he discusses whether the Blessed Virgin was sanctified in the womb, infers that, since the Church already celebrated the Nativity of the Blessed Virgin from that time...

[*Latin ed. p. 388*]

It is to be noted that she was sanctified even before her birth; and why? Because it is said: "A feast is not celebrated in the Church unless for some Saint." Therefore, the Blessed Virgin was sanctified in the womb. From this, it is clear that if St. Thomas were to write in our time, when it has been declared by the Church, according to pious opinion, that the feast of the Blessed Mary, preserved from original sin at the very moment of her Conception, or the infusion of her soul into her body, should be celebrated, he would certainly think and write differently, as Suarès says in his Commentary, book 2, with these words: "If he had seen the present face of the Church, he would teach differently about the Immaculate Conception of the Virgin." Petavius also says this about St. Thomas. Gabriel, in Dist. 3, q. 1, writes: "St. Bernard, nor St. Thomas, St. Bonaventure, and others, who formerly held the opposite opinion, are not to be blamed; because in their time, no determination was made by the Apostolic See; nor was that feast generally celebrated throughout the world." Several others, including the Dominicans, say the same, and notably John de Fenario, Doctor

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of Paris, and Master General of the Order of Preachers, as reported by Catharinus. John à St. Thomas, volume 1, page 1, question 2, on the approval of the doctrine of St. Thomas, cites other Thomists. Furthermore, St. Augustine, when arguing against a certain doctrine, warns Cresconius in book 1, chapter 23, to consult the Church. But now, it is not necessary for us to consult the Church, since the Church has already ordered that the feast of the Immaculate Conception, according to pious opinion, should be celebrated. And from this very strong argument, based on the authority of the Church, the defenders of the pious opinion rightly assert that our opinion is about to be defined as a matter of faith; for when speaking of the authority of the Church, St. Thomas teaches in 2-2, q. 10, art. 12: "The Church has the greatest authority, and its custom should always be emulated in all things..." Therefore, greater weight should be given to the authority of the Church than to the authority of Augustine, etc. Valentinus also writes in volume 3, d. 1, q. 1, page 7, § 41, speaking of the authority of the Pope: "In matters concerning piety and religion, his authority is infallible." Eusebius of Nuremberg adds in his *Theoria Compendiosa*, book 2, page § 1, that decrees of morals, the approval of the Holy See, and also the institution of feasts, which are considered to be ordered by the infallible Head, are exempt from all error. Then, Eusebius, in his *Opera Pathenica*, on the Perpetual Objection to the Feast, chapter 34, recounts a vote given by Cardinal Bellarmine, at the order of Paul V, before the General Congregation of the Roman Inquisition, concerning the Conception of the Blessed Virgin, in which Bellarmine expressed the following opinion: "If, perhaps, no formal definition is pleasing at that time, at least it should be decreed to all Churches that they recite the office concerning the Conception, as the Church recites it; thus, without a definition, it would have the intention." 264. Therefore, it is not very pious, nor probable, that some more recent writers have written that it is possible that the Church would ever define that the Conception of the Blessed Virgin was stained with original sin. While, as Vasquez rightly points out, it should not be considered that the Church would ever define as a dogma of faith that the Blessed Virgin...

[*Latin ed. p. 389*]

The Virgin was conceived in original sin, because by his authority, he has commanded the feast of the Conception to be celebrated throughout the Church. And Thyrsius Gonzalez, without doubt, asserts this in his work, in which he defends the proximate certainty of the Immaculate Conception. Therefore, the words of Blosius, chapter 5, page 623, should be noted, where he says: "It is truly astonishing that, even in our age, there are those who call into question the purity of the Conception of the most blessed Virgin, and stubbornly defend their opinion, citing the sentiments of the Holy Fathers; if they were alive now, they would undoubtedly judge differently."

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Certainly, the Church of Rome, by the very fact that it has adopted the celebration of the feast of the Conception, has sufficiently affirmed that the Conception was free from all contagion; for the Church does not celebrate profane feasts. And the Most Holy Pope Benedict XIV, in his most excellent work on the canonization of saints, book 1, chapter 42, says that our opinion is today morally certain, and that only the definition of the Church is lacking, so that the faithful are bound to believe in the divine Conception of the Virgin as immaculate.

It cannot be said that Mary, if she had not contracted the stain of original sin, could not have been redeemed by Christ; for it is commonly answered that, since she was preserved from guilt, she was truly and in a more noble way redeemed; as St. Augustine teaches in Psalm 85, with the word "Confitebor," that even to be sent to prison, one can also be said to be freed from prison by him who frees him, so that he is not led into prison. But this more noble redemption of the Virgin is most fitting for the Virgin, so that it could never be said that the Mother of God was ever hostile to God, nor that the Queen of Angels was ever subject to the devil. Indeed, Arnold of Chartres, in his work "On the Nativity of Christ," section, says: "It was not only fitting, but also just, that this vessel of election should not be subjected to common injuries." From all of this, it follows that the pious opinion of the preservation of the Blessed Virgin should be held today as certain, and that the opposite opinion is not more probable. This is clearly demonstrated by the fact that: 1. It is a matter of faith that the Church cannot err in matters of morals. 2. The cult of the saints (such as the celebration of the feast of the preservation of the Mother of God) pertains to the matter of morals; for it certainly pertains to morals to render to the Blessed Virgin Mary the due worship, and to deny the undue. Therefore, if the Church commands the feast of the preservation of the Mother of God to be celebrated, and cannot err in this, then the opinion of the preservation must be true and certain. From this, a certain learned author, in a book recently published in Naples in the year 4753, entitled "The Vindication of the Mother of God and Her Worshippers," rightly infers that the contrary opinion, after the decree of Alexander VII, is neither more probable, nor practically, nor speculatively. Indeed, even if our opinion has not yet been defined by the Church, it is well...

[*Latin ed. p. 390*]

Nevertheless, it can be held as a matter of faith; for we can certainly believe those opinions which are likely to be matters of faith, namely, the canonization of Saints, that the present Pope is the true Pope. Although these opinions are not declared by the Church to be matters of faith, as is subtly demonstrated by Viva in his *Cursus theologicus*, page 4, concerning faith with Suarez, Lugo, and others. Indeed, the Doctor of the Church states in *Summa Theologica*, 3rd Part, Question 3, Article 2, that we can

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believe as a matter of faith not only those things which we have through the infusion of faith, but also those things which we perceive through theological conclusions. The saintly Doctor says: "Faith is acquired through the science of theology." In our case, a theological conclusion is certainly derived from the aforementioned premises; for if it is a matter of faith that the Church cannot err in matters of morals, and the preservation of the Divine Motherhead certainly pertains to morals, then we can certainly hold as a matter of faith that the preservation [of the Divine Motherhead] is a matter of faith.

263. — Here, it is worthwhile to briefly consider the question of whether it is permissible to make a vow to dedicate one's life to the defense of the preservation of the Most Blessed Virgin Mary from original sin. Lamindus of Britain denies this in his *Opera de Moderatione Ingenii et Eius Seculi*, and so does Anthony Lampridius in his *De Superstitionibus Vitandis*, and Ferdinand Valdesius in his *Epistolis*. The reason is that no one can dedicate their life to defending a human opinion, to which falsehood may be attached; and the opinion defending the preservation of the Divine Mother from original sin, although pious, is a human opinion, since the Church has not yet established that this opinion is based on divine revelation or tradition. However, several modern theologians, and notably the author mentioned above in the cited book, *Deipara*, etc., strongly affirm the contrary. It is necessary to distinguish between purely human opinions and those which pertain to moral discipline, and in their own way, to faith, such as those that concern the worship of the Saints, and especially the Queen of the Saints, who is to be venerated above all the Saints. Furthermore, it is clear (as we have seen above) from the bull of Alexander VII that the opinion concerning the preservation [of the Divine Motherhead] pertains to the worship of the Blessed Virgin, since he declared that the feast of the Conception of the Mother of God should be celebrated according to the pious opinion. Moreover, even if such an opinion were by itself human, yet when it is referred to God, who wills that the faithful should honor their Saints, and especially the Mother, it is not purely human, but religious, since it is referred to God, according to the teaching of the Doctor of the Church in *Summa Theologica*, 2nd Part, Question 424, Article 5, where he teaches that the cause of martyrdom can be not only the defense of those things which are matters of faith, but also the works of all virtues, which are protests of faith; and in his own words: "The works of all virtues, insofar as they are referred to God, are certain protests of faith, by which it is made known to us that God requires such works from us, and that He rewards us for them; and in this respect, they can be the cause of martyrdom." Then, he adds in the 3rd: "However, since a human good can become divine if it

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is referred to God, therefore it can be..."

[*Latin ed. p. 391*]

Whatever good thing pertaining to human affairs, insofar as it is referred to God, can be the cause of martyrdom. But there is no doubt that an act of religion, such as offering worship to the Virgin, by celebrating, according to pious sentiment, the feast of her Immaculate Conception at the appointed time, as the Church requires; it is also certain, according to the teaching of the Angelic Doctor, that such worship can indeed be a meritorious cause of martyrdom. Therefore, if it is permissible and meritorious for anyone to give up their life so that they do not desist from offering this worship; much more so, it is permissible and meritorious for them to suffer death in order to defend this object of worship, namely, the preservation of the Blessed Virgin from the stain of original sin, to which this very worship refers. Hence, the Supreme Pontiff Benedict XIV, in his aforementioned work *De Canonizatione Sanctorum*, book 4, chapter 44, after showing that the Church is inclined towards the opinion of the preservation of the Immaculate Virgin, and that no one denies that it is more pious and religious, number 43, says: "Among the martyrs recognized by the Church are those who were killed by a tyrant, either because they were exercising a more religious sentiment, or because they were not omitting the exercise of some act of virtue, from which they could, however, have abstained without sin." And thus, the objection of Lamindi is satisfied, namely, that it is not permissible to risk one's life to defend the preservation of the Theotokos, because such a sentiment is not of faith.

ARTICLE IV. How should the excommunication of one who strikes a cleric be understood?

266 The words of the canon.

265 What is meant by the words "if anyone"? Are they minors? And under what conditions can they be absolved?

266 How are those who command or advise also included? etc.

267 How are those who ratify included?

268 How are those who do not hinder included?

269 Are those who are only obligated to hinder out of charity included?

270 What is meant by the word "cleric"?

271 What is meant by the word "monk"? Are hermits included?

272 What is meant by the words "who has laid hands"?

273 Is it required that the striking be done with mortal sin and external gravity?

274 The following are included: I. One who spits on a cleric, or inflicts a serious injury upon another. II. One who violently detains, etc. III. One who persecutes him so that he may fall away. IV. One who seizes his horse, etc.

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V. One who does these things even with the consent of a cleric. VI. A cleric striking himself; but others deny this. VII. A layperson striking a cleric, or an ecclesiastic striking through a layperson.

275 The following are not included: I. One who secretly steals. II. One who strikes by accident, or unintentionally. Are minor clerics included if they strike each other? And are those who are defending themselves, or their own, or their property included? III. If there is no mortal sin. IV. One who strikes a cleric through ignorance, or inadvertence, or through anger or passion.

Doubt 1. What if someone strikes another, not knowing that the other is a cleric, but with the intention of striking, even if he knew?

Doubt 2. Does crass ignorance excuse?

Doubt 3. What if someone strikes Peter, believing him to be Paul, who is a cleric?

V. Is a prelate, or a teacher, also excused?

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I. Whether a blow is considered light or grave.

II. Does one incur excommunication by giving poison to a cleric? 264.

— R. The response is as follows: If anyone, incited by the devil, inflicts violence upon a cleric or a monk, let him be subject to the bond of anathema; and let no bishop presume to absolve him (unless there is an urgent danger of death, until he is presented before the Apostolic See, and receives its mandates. Thus from c. Si quis 47, q. 4). 265.

— I. It is said. Understand that this applies to anyone, of whatever sex or status, even the immature, provided they are of sound mind and capable of deceit (as is stated in exception 1 of the decree "To women, and to boys, concerning excommunication"). Although the immature can be absolutely absolved by bishops, even if they seek absolution after puberty (Salm. de cens. c. 2, p. 5, n. 67, from the aforementioned decree "To boys"). Even if the blow is enormous, as say Pal. d. 3, p. 23, s. 4, n. 6, and Bonac. t. 3, de cens. in part. d. 2, q. 3, p. 6, n. 48, with Suar., Mol., Fill., Sayr., and Reg. from the last chapter of "To women, concerning excommunication"). 266.

— This extends to those who effectively command, advise, and consent. Busemb. rightly says "effectively," because, for these to incur excommunication, it is required that the blow actually occur, and that they, through command, advice, or consent, heavily influence it; thus, generally, Nav. c. 27, n. 51, Suar. d. 22, sect. 1, n. 55, Salm. de cens. c. 4, p. 2, n. 22, and Bonac. d. 2, q. 3, p. 6, s. 2, n. 1, with Sayr., Avil., Mol., Sylv., Fill., etc. from c. "To women, concerning excommunication." But does one incur censure if it is doubtful whether the command or advice had any influence? Or if the command or advice has been revoked before execution? See what is said on these matters in nos. 39 and 40. It should be noted here that if someone were

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to say before others: "I desire revenge on that cleric," they would certainly incur excommunication if, because of this statement, others were to strike the cleric; thus, Croiæ l. 7, n. 303, Renz. t. 1, p. 266, quæst. 4, with Diana, and Avila, and Salm. cited in n. 22, at the end, with Con., Sylv., etc. arguing from the last chapter on homicide, n. 6. Understand this, if he foresees that others will strike him because of it. 267.

— It also extends to those who approve of a blow committed in their name. It is certain that approval is sufficient to incur censure, as is stated in the decree "To women, concerning excommunication." But for this, it is required: I. That the blow was committed in your name, or to your benefit. II. That the approval was given.

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I. One incurs a censure, provided that one acts externally in such a way. III. In order that, when a strike occurs, one may be able to carry out the mandate, or the advice for the strike, at least habitually; for if one is mad, one does not incur [a censure], otherwise, if one is drunk, or sleeping; thus, generally, Bon. d. 2. q. 3. p. 6. §. 2. n. 8. Pal. d. 3. p. 23. §. 2. n. 14. Conc. t. 10. p. 467. n. 6. Croix l. 7. n. 306. et Salm. ibid. n. 25. cum Suar. Sayr. etc. 268.

• Moreover, those who are hindering [the strike], at least if they are bound by duty or justice, such as kings, judges, and other superiors. Also, fathers, guardians, heirs, teachers, pastors, etc., to whom the care of others has been entrusted. Thus, Laym. l. 4. t. 5. p. 2. c. 5. n. 6. Bon. d. 2. qu. 3. p. 4. n. 8. ex Molin. et commun. 269.

• I said "at least," etc., because, if one is bound only by charity, they teach that even excommunication is not incurred (Suar. Caj. Fill. Mol. Sayr. etc.). However, this is more likely denied by Bon. l. c. ex Nav. Con. Reg. Henriq. Mol. etc. (And thus, they hold more truly (Nav. c. 27. n. 78. Bonac. d. 2. qu. 3. p. 6. §. 2. n. 5. Laym. tr. 5. p. 2. c. 5. n. 6. et Pal. d. 3. p. 23. §. 2. n. 43. cum Holzm. et Henr. ac Salm. de cens. c. 4. p. 2. n. 23. cum S. Anton. Pal. Con. Bon. Avil.). The reason is that only those who are considered to be favoring the strike by justice (as the text "Quantæ" on sentences of excommunication says) incur [a censure]; not, however, those who are bound only by charity, even if they do not hinder out of hatred, since an external act is also required to incur a censure, as stated in n. 34.) 270.

• It is said: II. *clericum*: understand thereby anyone who has at least been initiated by tonsure (even if married, provided that he is with only one virgin), and who wears the habit, and serves in the Church; also, even an excommunicated, suspended, interdicted, or degraded person, only verbally. (Thus, also comm. Salm. ibid. n. 21. However, one does not incur [a censure] for striking a cleric who is a bigamist in reality, but rather, if it is a civil marriage, namely, one who, being in Holy Orders, contracted and consummated a marriage; nor does the striker of a cleric incur [a censure] who, laying aside the habit, entered into secular affairs, nor after the third

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admonition of his superior. Salm. l. c. circa med. communiter. See also this and other things l. 6. n. 827.) 271.

• It is said: III. *monachum*: understand thereby any religious person, even a layperson, converted, novice, of either order. Also, the tertiaries of St. Dominic, St. Francis, if they wear the habit and live in community. Also, hermits subject to a rule, or a superior. Hence, all those living in community under a prelate enjoy the privilege of canon law, either by express or tacit authority of the Pope, even if there is no profession made in their community, thus, Navar. c. 27. n. 70. Suar. d. 21. sect. 4. n. 22. et Bon. d. 2. qu. 3. p. 6. sect. 3. n. 16. cum Con. Mol. Fill. Regin. Avila, Graff. etc. The same is said by Fagn. in c. Nullus, de forocomp. n. 59. concerning women living in convents, quam-

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Although the religious habit is not yet formally approved, those who live piously are considered ecclesiastical persons. And Renzius states this in book 5, chapter 44, regarding seminarians and students of colleges, such as the boys of the Basilica of Saint Mary Major in Naples, of Saint Onuphrius, etc. Hermits also enjoy this privilege, those who, by vow or agreement, dedicate themselves to a particular sacred place, under the jurisdiction of the Bishop, as taught by Suarez, book 22, section 4, number 22, and by Fagnan in the aforementioned work, against Tournhem, treatise on ecclesiastical censures, part 2, chapter 4, article 4, section 4, question 3; Roncaglia, page 102, question 2; and Bonaventure, in the aforementioned work. Palafox also states this in book 3, page 22, paragraph 4, number 14, regarding hermits who live under a particular rule and obedience, having made a vow of obedience or poverty. Generally, these authors teach that vagrant hermits who wear a distinctive habit do not enjoy this privilege, even if they serve a church, even by order of the Bishop, as Fagnan states in the aforementioned work, number 59, citing a decision of the Roman Rota, number 272.

It is said that "IV hands have been laid upon" [someone], which means any contumelious act, exteriorly demonstrating mortal offense, against a cleric or something belonging to him, whether done by hand, stick, sword, etc. (Bonaventure, book 2, question 4, page 1, number 273). Therefore, to incur this excommunication, it is required that the blow be mortally sinful and also externally serious, as taught by Bonacich, book 2, question 3, page 6, section 4, paragraph 1, and by Cajetan, Moller, Pignat, etc., in Crocius, book 7, number 304. Thus, one does not incur it who only makes a gesture of striking, and does not actually strike; as stated by Salmeron, in the aforementioned work, chapter 4, page 2, number 27, and by the Council, page 467, number 7, and by Tournhem, in the aforementioned location, question 4, and by others throughout. However, Palafox rightly notes in book 5, page 23, paragraph 2, number 2, and Suarez, book 72, section 2, number 26, and Crocius, in the aforementioned work, with Sperelli and

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Bonacich, book 3, number 2, with Conciliarius, Fillian, and Regius, that a strike is always considered a serious offense, due to the reverence due to a cleric; therefore, any light strike is sufficient for censure, even if only the slightest physical contact occurs. It should be noted, with the common Doctors (as noted by Crocius, ibid.), that this canon, having been issued in favor of clerics, should be understood not strictly, but broadly. From these points, the following resolutions are made:

1. One incurs this excommunication who spits upon, splashes with water or dust, defiles with mud, pulls out hair, tears clothing, or forcibly takes something from the cleric's person, causing an injury, such as a *pileo* (a type of cap), a pallium, etc., so that the action is seriously offensive (Bonaventure, in the aforementioned work; Layman, chapter 5, number 5).

2. One who imprisons or violently detains someone in a place from which they cannot exit without disgrace (ibid.).

3. One who pursues someone so that they fall into a river, a ditch, are thrown from a horse, etc. (ibid.). Whether one incurs this excommunication who, pursuing a cleric, unintentionally and without forethought causes that cleric to fall, is a question. Bonacich denies this in book 2, question 3, page 6, section 4, paragraph 1, number 5, citing Sylvaticus and Renzius, volume 4, page 577, question 6, and rightly so.

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It is probable, as Croix states in book 7, chapter 308, that in such a case, the injury is purely accidental. However, Croix, along with Sperelli, asserts with equal probability that the same applies when a person explodes a shell in the presence of a cleric, even if the shell does not touch him, and the cleric falls due to fear, because in that case, the explosion is the direct cause of such an injury.

IV. He who inflicts violent acts upon a horse upon which someone is riding, causing death, injury, or cutting, even by means of a bridle; this action, although light with respect to the body, is not so with respect to honor. (This is taught by the commentaries of Suarez, Paleario, Bonaventure, and others, cited in number 273, and by Salmeron in *De Censuris*, chapter 4, page 2, numbers 26 and 27, along with Laym, Avila, and others.)

V. He who commits any of the aforementioned acts, even with the consent of a cleric, provided that it is injurious to the clerical order. (Thus, the commentaries of Suarez, Bonaventure, and others, along with Salmeron, ibid., number 19, at the end, from chapter "Nemo," cause 14, question 5, and from chapter "Contingit," concerning excommunications. The cleric who consents, from the same chapter "Contingit," is also subject to excommunication, but this is only a matter of opinion, as Bonaventure and Croix rightly point out in book 7, number 305, when they say: "If any cleric voluntarily subjects himself, let him be excommunicated." However, this

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must be understood in the sense that if such an assault, even with the consent of the cleric, does not cease to be injurious; otherwise, it would be different if the consent removed the injury, for example, if a cleric asks to be struck by another in order to atone for his sins. Salmeron, *De Censuris*, chapter 4, page 2, number 20, at the end, with Con.)

VI. If a cleric injures himself maliciously or out of passion (unless it is out of devotion), Laym states. (Thus, Suarez, in the second part, section 1, number 59, and Bonaventure, in the second part, question 3, page 6, section 2, number 7, along with Navarrus, Con, Sayr, Avila, and others, hold this view. However, Paleario, in the third part, page 22, section 2, number 4, Diana, page 9, line 4, number 7, and Croix, in book 7, number 340, along with Tolet, Barbatus, Turian, Paschasius, and Delbene, consider the opposite to be probable, because the canon seems to speak only of one cleric injuring another.)

VII. He who strikes a cleric, even meritoriously, if it is done either by someone who should not do so, such as someone who deserves to be punished by a secular judge, or in a manner that warrants punishment by a prelate, such as by a lay person. (Bonaventure, ibid., from Navarrus, Sayr, Suarez, Fillon, and the Council. See Laym, chapter 5, number 275.)

2. The thief does not incur excommunication who secretly cuts off a lock of hair or steals a garment from a cleric; because it is not a violent act, but a fraudulent one. (However, if it is taken violently, as Laym states in *De Censuris*, chapter 5, number 5, along with Cajetan, Con, Suarez, Molinos, and Salmeron, ibid., number 2, along with Paleario, Avila, and others, in the commentaries, because in that case, although the body of the cleric is not injured, his honor is nevertheless injured.)

II. If the assault is jesting, (Although it may be serious, and even if it is accompanied by some anger, provided that it does not amount to mortal sin, as Paleario rightly states in the third part, page 23, section 3, number 2, Bonaventure, in the second part, question 3, page 6, section 4, number 3, and Salmeron, ibid., number 28, along with Avila and Tambyle, from chapter 1 concerning excommunications, where it is said: "Nor are clerics excommunicated, if they are of full age, and

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It may happen that they strike each other, not out of hatred (understood in a grave sense), nor out of envy, nor out of indignation, but out of playful jest; or, casually, for example, if a janitor or usher, restraining the crowd, strikes a cleric; or if boys, having received the tonsure, strike each other with their fists; as Bonaventure teaches, citing Mollerus, Fillon, and others. Indeed, even among those who have been clothed in the minor orders: and although blood may be shed from the nostrils, as Salmeron states in *De Censuris*, chapter 4, paragraph 2, number 28; Palafox, chapter 2, number 2, with Laym, Mollerus, and Bonaventure, chapter 4, sec-

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tion 4, number 14, with Fillon and Avila, because the striking of boys is not generally considered a serious offense; and Sotus admits this, citing Salmeron in the aforementioned passage, and even if the striking is severe; however, this must be understood if the striking was not intended. Also, if the striking occurs in defense of oneself, or of one's life, or of one's wife, parents, children, or property, with moderation, as taught by Laym, infra, III. Finally, when the striking, due to levity or imperfection of the act, is inflicted upon a layman, as Cajetan, Avila, and Salmeron teach; which, however, Suarez does not universally admit. See Bonaventure, chapter 4. If it is done in darkness, or if one does not recognize the person as a cleric, because he is not wearing his habit; because ignorance is an excuse. Thus, also, sudden anger is an excuse, which causes one not to fully realize what is being done, as commonly stated by Suarez, *d. 22*, section 4, number 50; Bonaventure, *d. 2*, question 3, page 6, section 4, number 3; Laym, *l. 4*, title 5, page 2, chapter 5, number 8; Palafox, *d. 3*, page 5, section 3, number 3, with Consentius and Salmeron, *dict. n. 28*. But here, doubt 4 arises: does one incur excommunication by striking someone, unaware that the person is a cleric, but with a disposition as if, even knowing, one would strike? Covarrubias, Ugolini, and others affirm this, citing Croix, *l. 7*, number 314. But more commonly, and more probably, Sanchez, Decius, Suarez, Bonaventure, and others deny this, citing Vasquez, Mollerus, and Fillon, as well as Palafox and Navar, citing Croix, *l. c.*, because, when ignorance is present, there is only an interpretative will, which is not a true will. Conversely, it should be said if the one striking already doubts whether the person is a cleric, as Bonaventure teaches, *ib.*, number 48, with Avila. Suarez, number 10; Sanchez, number 14; Croix, number 314; and Bonaventure, number 21, with Fillon, Avila, and others, also hold that if one strikes a cleric, unaware that the person is a cleric, but intending to strike him, whether he is a layman or a cleric. Doubt 2: does crass ignorance excuse the striking of a cleric from incurring excommunication? Sylvestri, Abbondanzio, Felin, and others affirm this, citing Sanchez, *de Matrimonio*, *l. 9*, *d. 32*, number 41, because (as they say) that which tempts the devil implies deceit, which is not found in crass ignorance, but rather, Croix, Sanchez, and others, with Covarrubias, Tabien, and others, rightly reject this, because that which tempts the devil only implies striking with a serious sin. Doubt 3: does one incur excommunication by striking Peter, a cleric, believing him to be Paul, a cleric? See the statements in *l. 4*, number 628, see Question I, where we have held the affirmative opinion.

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V. If a prelate, instructor, or father, for the sake of correction (even if anger is present), strikes a cleric who is under his authority, he must do so moderately, taking the fault into account. (Thus also Salm. de cens. c. 4. p. 2. n. 29, with Bon. Avil., etc., and the same is said by Salm. ibid. at the

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end, concerning the one who strikes a cleric under his care, from c. Cum voluntate 54. §. If anyone, from the decree of excommunication.) "Indeed, a prelate and an ecclesiastical instructor can also chastise a cleric who is of age." (Understand always moderately; for the Holy See declared a certain parish priest excommunicated who had struck his clerical student several times on the head for the sake of correction, and then beat him with fists and a stick, as reported by P. Zach. Adn. ad Croix l. 7. n. 348, who there, for the same reason, does not excuse the prelate if he beats a religious person excessively, tramples him with his foot, or does similar things.) "Whether a father can also punish a cleric with blows is disputed, with probable arguments on both sides. See Laym. in the place cited below." Question: Can a father punish a cleric with blows? It is certain that he can, if the cleric is under his authority, as stated in c. Cum voluntate 54. §. If anyone, from the decree of excommunication, where it is granted to all those who have considered it necessary to correct those of their family, or relatives of a lower rank, in order to restrain them from their insolence. It is doubtful whether he can do so if the cleric is in Holy Orders? The first opinion denies this: and this is held by Laym. l. 4. tr. 5. p. 2. c. 5. n. 9. Pal. d. 3. p. 23. §. 3. n. 8. with Host. Panorm. Ang. Mol., etc., because there is nothing to suggest that a father can lay hands on clerics in Holy Orders. This is probable, but the opinion that affirms it seems more probable, and this is held by Suar. d. 22. sect. 4. n. 49. Bon. d. 2. q. 3. p. 6. sect. 4. n. 4. Conc. t. 40. p. 468. n. 8. Cont. Tourn. tr. de cens. part. II. cap. 4. art. 4. sect. 4. v. 3. is excused, and Salm. de cens. c. 4. p. 2. n. 30, with Valent. Bann. Con. and Avila. And it is proven from c. 4. of the decree of excommunication, where the teacher is excused if he strikes a clerical student (even if he is of full age, as is stated there, from which it is also included that a cleric in Holy Orders) with a view to discipline, or correction. Therefore, if the teacher can strike a cleric not only for the sake of discipline, but also for the sake of correction, then the father can certainly do so, to whom it primarily and by natural law belongs to restrain the insolence of his children. VI. If a cleric who is degraded, or a bigamist, or one who publicly exercises the office of a tavern keeper, or butcher, or a scoundrel, is struck, and after three warnings he does not cease, or is found acting shamefully with his wife, mother, sister, or daughter, or finally, a woman is found to be soliciting him to commit an act of impurity, because he has lost his privilege. See Laym. l. 4. tr. 5. p. 2. c. 5. Fill. l. 45. c. 4." Thus, from c. 3. of the decree of excommunication, he is excused from censure who is found with a cleric, his wife, mother, sister, or daughter, in a shameful manner.

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Then, if violence is employed; otherwise, if the woman is not so closely related by blood. Hence, Fill. tr. 45, c. 1, q. 6, n. 12; Laym. l. 1, tr. 5, p. 2, c. 5, n. 8; and Ron. d. 2, q. 3, p. 6, sect. 4, n. 7, with Mol. Con., etc., generally

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do not excuse the one who strikes a cleric found with his grandmother, or granddaughter. However, Nav. c. 27, n. 84, and Bon. l. c., n. 6, with Mol. Con., and Avila, hold that the husband is excused if he hides himself by stealth, awaiting the cleric, so that he may kill him while ignorant of the affair; otherwise, if he hides himself by agreement with his wife, since it is never lawful to defend fraud. But even in the first case, Laym. in the cited passage, with Nav., contradicts Bon., because it is least likely that the man will find the cleric while he is waiting for him; rather, he is excused because, as the Glossary says, he cannot restrain sudden anger, to which he is rather aroused at that time. Suar. d. 22, sect. 1, n. 37; Bon. l. c., n. 8; Cont. Tourn. in the cited passage, v. 2; and Salm. de cens. c. 4, p. 2, n. 31, with Pal. Laym. Con., etc., rightly excuse the man if he kills a cleric found with his wife in a suspicious place, or if he is talking with him after a warning that he abstain from such conversation. Furthermore, Cont. Tourn. l. c. Conc. p. 469, and Croix l. 7, n. 307, with Nav. Sylv. Ang. etc., note that the man who strikes such a cleric is excused only when the blow is struck in the very act, or immediately after the adultery; for then alone does that sharp feeling of pain deserve indulgence. The woman who strikes a cleric who is soliciting her is also excused, if she cannot deter him with words. Therefore, if the cleric only attempts to solicit with words, she should only repel him with words, unless he is so insistent that the woman cannot free herself from him by words alone; thus, Suar. d. 22, sect. 1, n. 23, and Salm. dict. n. 31, in fin., with Sylv. Avila, Sayr. etc. However, it must be understood that if such solicitation places the woman in some moral danger of falling, even into the sin of thought, 276. — • Resp. 2. And if this excommunication is reserved to the Pope, the Bishop can nevertheless absolve him in these cases: 1. When the blow, even if mortal, is, according to prudent judgment, light, compared to the enormity (thus from c. Pervenit, de sent. exc.), for example, if it is done with the palm of the hand, a fist, or a stone that leaves no mark, and according to Ant. and Dian. p. 9, t. 4, res. 19, unless it causes a notable injury and great scandal, which they deny if someone strikes a priest in the face with a fist, even if drops of blood flow. (Thus also Viva q. 5, art. 3, n. 8, with Dian. and Glossa). • It is truly enormous if a limb is severed, or if a copious amount of blood is shed; or even by reason of the dignity of the person, as if a Bishop or Abbot is struck, even with a slap. 2. If the one who strikes is an adolescent, a poor person, a sick person, an old person, a woman, a blind person, a lame person, a slave, a minor; or not of full age, such as religious and nuns striking each other; also if they are people from-

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Those who are married, and all those who have a legitimate impediment that prevents them from going to the Pope, or his Legate; or if there is doubt about the excommunication, see Fill. l. 45. c. 6. n. 35 and following. Finally,

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if it is hidden. See above here and Diana, p. 9, vol. 4, p. 63. In all these cases, the faculty to absolve can also be obtained freely from the Roman Penitentiary by the Major Penitentiary, as mentioned above in book 1, in Appendix 277. Therefore, it is necessary to distinguish: one is a grievous assault, another is a moderate, or serious, one, and another is a light one, which is no longer called light, because it only implies a venial sin; for in order to incur excommunication, a grave fault is always required; but it is called light in comparison to a serious and grievous one. This distinction is commonly made by Doctors of Theology, and is gathered from the constitution in Extravagantes, which is extensively quoted by Navar in chapter 27, paragraph 94, where it is also attributed to Innocent IV by others, and to Pius II by others; but Navar attributes it to John XXII. However, the Doctors of Theology commonly accept it, as seen in Cabass. T. J. l. 5. c. 2. n. 6, and in Pal., Bon., Ronc., and those cited below. In the aforementioned Extravagantes, it is written: "We say that a light assault is a blow with the fist, palm, hand, foot, finger, or with a stick, or a stone, which leaves no mark, nor any bruising of the flesh, nor does it sever a limb, without the extraction of teeth, without the pulling out of many hairs, without the shedding of much blood." However, we do not wish to say that such a light assault, as a fist or a fingernail, is grievous because of the shedding of much blood. However, in judging what injury is light, moderate, or grievous, we wish to carefully consider not only the fact, but also its quality and the manner in which the assault was committed, with all its circumstances of place, person, and other factors. The person assaulted matters, if it is a teacher, a Jew, a prelate, a father, a patron, or someone of dignity, who is unjustly struck by a subordinate, or by someone else of lower status, because such injuries are sometimes considered serious to them, even if they are light or moderate. And because the circumstances of the case do not allow for a complete determination of this matter, we leave it to your judgment to declare what is a light injury, and what is a grievous one, warning you to rather declare that the assault is a serious one, and that you cannot absolve from it, than, by declaring it to be light, to give an opportunity to harm the ecclesiastical order. Hence, the Doctors of Theology say that a moderate assault is one in which a tooth is extracted, or a large number of hairs are pulled out, or there is a bruising of the flesh, with a large shedding of blood, without a serious injury or offense; thus Bon. d. 2. p. 6. sect. 5. num. 8, and Ronc. p. 104. q. 4. r. 3. The same Doctors, Bon. and Ronc., and Pal. d. 3. p. 23. §. 4. num. 2. Cont. Tourn. de cens. part. II. cap. 1. art. 4. sect. 4. v., and also Conc. p. 468. n. 9, say that a grievous assault is one in which there is a large wound, or a large shedding of blood, other than from the nose, or a large injury.

[*Latin ed. p. 400*]

278. Furthermore, the prelates and others are commonly instructed that

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a seemingly minor assault can, due to circumstances, escalate into a grave or even enormous offense, namely: I. Due to the person offended, as when a Bishop, abbot, monastic superior, or judge, magistrate, or other person of dignity is assaulted; as stated by Palafox, Bona, Concilium Tridentinum, and Roncaglia, book 2, chapter 2. II. Due to the person committing the assault, as when a lay official assaults a cleric with authority, or a commoner assaults a noble ecclesiastic; as stated by Suarez, part 22, section 4, number 94; Roncaglia, ibid.; and Bona, ibid., with Navarrus, Mollerus, Fillonius, and Regius, book 3. III. Due to the person in whose presence the assault occurs, namely, if it occurs before a prelate or other person of dignity; as stated by Bona, Roncaglia, and Palafox, with Mollerus. IV. Due to the scandal caused, namely, if a monk assaults a secular cleric with grave scandal; as stated by Viva, on censure, question 5, article 3, number 8; Roncaglia, ibid.; and Bonacini, ibid., who adds that the same applies if a cleric is assaulted within the cloister in the presence of religious. V. Due to the location, namely, if the assault occurs in a church or public square; as stated by Cabassut, Tome J, book 5, chapter 2, number 6; Palafox, Concilium Tridentinum, ibid.; and Roncaglia, book 6. VI. Due to the timing, as when a cleric is assaulted while wearing sacred vestments, or while engaged in public duties in the choir, or during a procession or public prayer; as stated by Cabassut, Palafox, Concilium Tridentinum, and Roncaglia. VII. Due to the injury inflicted, as when a cleric is stripped naked, or his face is defiled with ink or excrement; as stated by Cabassut, book 5, chapter 2.

279. Given these considerations, it should be known that Bishops can grant absolution from even a public, minor assault, as taught commonly by the Doctors, with Bona, book 2, question 3, page 7, section 5, number 3, and as is evident from the decree "Pervenit" from the Extraordinary Session. Similarly, their Vicars General can do so, because Bishops have this authority by ordinary right, as stated by Sanchez, on marriage, book 3, chapter 7, number 40, and by Bonacini, ibid., page 6, section 5, number 4, with Mollerus, Regius, Lezaria, etc.; see the aforementioned number 224. Whether those with quasi-episcopal jurisdiction can grant absolution from such an offense is discussed in the aforementioned number 79. However, only the Pope or a Legate *a latere*, who possesses pontifical authority, can grant absolution from a truly enormous or a public, moderate assault, as stated in the decree "Ad eminentiam" from the Extraordinary Session. Also, Legates sent to a particular province can do so, as stated in the decree "Penult." from the Office of the Legate. If the assault is concealed, Bishops can also grant absolution from it, as stated in the decree "Liceat" in session 24 of the Council of Trent. Furthermore, even women can grant absolution from a public assault, as stated in the decree "Mulieres" from the Extraordinary Session. This applies even if the assault is enormous, as stated by Viva, question 5, article 5, number 40, with Suarez, Mollerus, and Fillion. Similarly, even minors can grant absolution, even if those who are past

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puberty seek absolution, as stated by Viva, ibid., with the aforementioned Doctors, from the decree "Pueris fin." in the same title. Also, those who live collegially can grant absolution if the assault is grave, but not if it is enormous; see the aforementioned number 88. Furthermore, all those who are impeded from going to Rome, as mentioned in the aforementioned number 88, can also grant absolution. As for when regular prelates can absolve their subjects and others from this excommunication, see the aforementioned number 107. Finally, Croiae, book 7, number 325, rightly points out that, in granting absolution...

[*Latin ed. p. 401*]

Regarding the censure of striking a cleric, even a public striking, recourse may be had to the Holy Penitentiary.

Doubt 1: In a case of doubt, should the striking be considered light or grave? Bordon, in *Vivarium*, question 5, answer 3, number 8, states that it should be considered light. However, it must be said that the opposite is true, as stated by Bonaventure, in *De Modo Sententiandi*, 2nd part, question 3, page 6, section 5, number 8; *Vivarium*; and Roncaglia, *loco citato*, and the Council of Trent, session 14, decree on reform, chapter 4, number 9, which testifies that this is the common opinion, and it is clear from the cited *Extravagantes*. After reading the words in number 227: "We admonish that, in a case of doubt, the striking should be considered grave, and that one should not be absolved from it." There, the reason is given, lest occasion be given for harming the ecclesiastical state.

Doubt 2: Does one incur this censure by giving poison to a cleric? Four opinions exist. The first opinion, held by Avila and Rodriguez, in *Diana Veteranorum*, page 9, treatise 4, response 36, absolutely denies that it incurs the censure, unless the poison is given by force to be drunk; for otherwise, they say, there is no violence done to the person, but to nature. However, *Diana Veteranorum*, in the same place, rejects this opinion, as it is contrary to the common opinion; and Renzius, in volume 4, page 578, question 9, reports that in the year 1640, it was expunged from the *Summa* of Rodriguez, by order of the Holy Inquisition in its expurgatory. The second opinion, held by Fillian, in treatise 44, number 426, and by Suarez, and others, in Croia, volume 7, number 302, states that it does not incur the censure, unless death follows. But neither does this opinion seem sufficiently probable. The third opinion, held by Croia, in the same place, with Beja and Sperelli, states that it incurs the censure from the beginning, because poison is of itself apt to cause immediate harm. The fourth opinion, which is more common, and which seems to me more probable, states that it does not incur the censure, unless after the poison has begun to cause harm. The reason is that, for incurring the censure, the canon does not require death, but requires the effect that follows, namely, the violence inflicted; but before the poison causes harm, there is no effective violence,

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but only an action apt to inflict violence; thus, Bonaventure, in *De Modo Sententiandi*, 2nd part, question 3, page 6, section 4, paragraph 1, number 6; *Vivarium*, question 5, answer 4, number 2; and *Diana Veteranorum*, with whom Renzius, in the same place, agrees.

ARTICLE V. What excommunications are reserved to the Pope by the Bull *Cæpæ*?

Regarding the excommunication of those who retain, read, etc., books of heretics?

To incur this excommunication, it is required that:

I. The author be a heretic. Can the books of the Old Testament, or of the Hebrews, be read?

II. That the book contain heresy, or deal with religion. What if the error is erased? Or if the author is not condemned as a heretic? What if someone reads it to refute a heretic?

III. That the material be read in Mdina.

[*Latin ed. p. 402*]

285 IV. In order that it be read knowingly, etc.

286 One does not incur [excommunication] I. If one reads a book containing the words of heretics. II. If one reads the commentaries of heretics.

287 Are philosophical books, or those which incidentally contain heresy, prohibited?

288 Which books are prohibited in the Index?

289 How many classes of prohibited books does the Index contain?

290 To whom does it pertain to prohibit books?

291 Is it permissible, even with permission, to read heretical books out of curiosity? And is it permissible for one who is certain that reading them will not be harmful to him to read prohibited books?

292 Does one incur [excommunication] by reading the preface, index, etc.? Does one who hears someone reading incur [excommunication]? And what if it leads to reading?

293 Does one who reads a short script, or a manuscript, incur [excommunication]?

294 Does one who reads two lines, or less than a page, incur [excommunication]?

295 Does one who retains [the book] for a short time incur [excommunication]?

296 Does crass ignorance excuse [one]? What if someone knows that a book is prohibited by a virtuous person?

297 Does one incur excommunication by preventing a book from being burned, or by praising its style, etc.?

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298 Does one incur excommunication by placing a prohibited book with another?

299 Does one incur excommunication by burning [the book]? From whom is permission required to read [the book]?

300 In order to incur excommunication for heresy, is it required I. That it be formal?

301 Q. 1. Does one who errs through crass ignorance, or affected ignorance, incur [excommunication]?

301 Q. 2. Does one who doubts concerning matters of faith incur [excommunication]?

303 Requirement II. That the error be external.

304 Requirement III. That the manifestation be morally evil.

Requirement IV. That the mind embraces the error.

305 See other things to be noted.

306 Those who believe, favor, receive, and defend [heretics] also incur [excommunication].

307 Q. I. Does one who favors a heretic out of friendship, etc., incur [excommunication]?

308 Q. II. Does one who receives a heretic, so that he is not excommunicated, incur [excommunication], if the intended effect is not achieved?

309 Also, incur [excommunication] by the Bulla I. Those who steal the goods of shipwrecked persons. II. Those who impose unjust taxes. III. Who else incurs excommunication by the Bulla?

284. — ANSWER. The primary [penalty] is against heretics, which extends not only to those who favor, receive, and defend heretics, but also to those who knowingly retain, read, print, and defend books of heretics that treat of religion, or that contain heresy, for any reason, public or hidden, by any means or pretense. To incur this excommunication, four conditions are required: I. That the author of the book be a heretic. II. That the book expressly contain heresy, or treat of religion. III. That it be read in a manner noteworthy, and sufficient for a mortal sin. IV. That it be read, printed, or retained knowingly. Laym. l. 2. t. 4. c. 45. n. 4. »

282. — Therefore, in order that this excommunication be incurred, it is required I. that the author be a heretic, therefore, those who read the books of infidels do not incur [excommunication], even if they contain heresy, as it is stated in the Bulla that the books are of heretics; thus Suar. d. 20. s. 2. n. 14 and 43, and Salm. de cens. c. 4.

[*Latin ed. p. 403*]

p. 5, no. 74. The Talmud and similar Jewish books are prohibited by papal bulls from Pope Pius IV and Pope Clement VIII, as noted by Croix, vol. 7, no. 333. Holzmüller, in volume 1, page 179, no. 78, states: "Those

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who read, even if they are numbered among the books prohibited by the bull, are excused, if the book explicitly treats of heresy, even if the author is unknown, because in such a case, the author is certainly considered a heretic." 283. – Requirement II states that a book must treat of religion or contain heresy. Therefore, it is sufficient if a book contains only one error against the faith, or if it explicitly (and not merely incidentally) deals with religion, namely, with Holy Scripture, or with scholastic, dogmatic, or moral theology, or with the mysteries of the faith, or with the worship of God or the Saints, or with the rites of the Church, or with canons, or with spiritual matters, and the like, as Salmeron states in *De Censuris*, chapter 4, page 5, no. 72; Suarès, no. 16; Sanchez, *Decis Synodalibus*, book 2, chapter 10, no. 21; Layman, book 2, treatise 1, chapter 7, no. 3; and also the Decrees of Illsung, Tambov, etc., as cited by Croix, vol. 7, no. 334. If, however, the error against the faith is erased from the book, Croix, no. 330, with Pignatelli, states that it is likely excused from censure, for those who read the rest of the book, because the book no longer contains heresy, nor does it present any danger of perversion. However, Suarès, Bonaventure, and others, and Sanchez, book 2, chapter 10, no. 3, contradict this, arguing that this particular excision does not remove the general prohibition of the book. However, I find the distinction made by Sporer in volume 1, on faith, page 422, no. 40, to be agreeable, namely, that if a book explicitly deals with religion, even if the error has been erased, it remains prohibited, because the bull absolutely forbids reading or retaining books that treat of religion written by heretics. Conversely, if a book deals with another subject, such as philosophy or history, except for books like the *Centuriators of Magdeburg* and similar works, in which religion is truly discussed, and in which the intent is to undermine the monastic state and to denigrate the Church, then Croix, with Suarès, Tollet, Paleari, Pignatelli, and others, commonly (contrary to Decianus, Mascle, and Caram), states that the reader of such heretical books does not avoid excommunication by the bull, even if he reads in order to refute the error, and without any danger of perversion, because the prohibition is made out of hatred for the heretics, and the bull forbids reading for any reason or pretext. However, Layman and the Decrees, as cited by Croix, no. 343, limit this, stating that if a learned man were to read such books, hoping certainly that he would convert a heretic, Holzmüller, page 177, no. 77, states that this is likely. But Elbel, volume 2, page 439, no. 99, with Sayr, asks: "Are those who read a heretical book excused by *epikeia*, if they are necessarily in need of such reading in order to refute a heretic from his own book, or from another heretic's book, for example, in order to find a contradiction, etc., provided that there is no danger and there is no recourse to Rome or elsewhere?" Those who read books or writings prohibited for heresy, or suspected of heresy, are likely excused, as Pignatelli and Duard state in Croix, no. 334, from incurring

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excommunication.

[*Latin ed. p. 404*]

The communication of the bulla, unless the author is condemned as a heretic, or is born from a heretical sect, would incur an excommunication, which is not reserved. 284. — Requirement III: The reading must be of a notable matter, for although Tolet and Ugolin, in Bonaventure, book 7, question 2, page 4, number 14, deny that there is a smallness of matter in this case, because (as they say) one can find an error in a single line; commonly, however, Doctors admit the smallness of matter, although they differ in assigning what that smallness is. Some, as Sanchez, book 2, chapter 10, number 34, with Sahagun, Manuel, and Vivaldi, say that it is one page, and more, if the volume is of larger size; but this opinion is rightly not admitted by Salm, on censures, chapter 4, page 5, number 74, and the same is the opinion of Bonaventure, book cited, if the page is larger; others, as Graff and Regius, in the same, say that it is three or four lines; others, as Suarez, book 20, section 2, number 20, and Palearius, treatise 4, on Faith, book 2, page 10, section 2, number 6, with Azor, Concinius, and Sayr, in Bonaventure, say that it is ten lines; others, finally, as Holzmeister, volume 4, page 477, number 77, see; as I said in Quarten, Sporer, volume 4, page 124, number 434; Elbel, volume 4, page 307, number 443; and Croix, book 7, number 331, with Marchant, more correctly distinguish, noting that the purpose of the prohibition must be considered; if, by opening a heretical book, you encounter doctrine that is directly contrary to the faith, you can incur excommunication, even if you read only a few lines, because there may be danger of perversion in those very lines; otherwise, if the book is primarily about a matter that is indifferent, then, by reading even a page, you are excused from mortal sin, if you do not read any error there. 285. — Requirement IV: Such books must be read, printed, or retained knowingly. And those who buy, sell, or transport them are also subject to the same excommunication, as stated by Salm, on censures, chapter 4, page 4, number 47, from the decrees of the Pontiffs. Nor should those who defend them, not only verbally, but also in deed, be excused, namely, if they prevent such books from being delivered to the Bishop, as stated by Palearius, Tamburrini, and others, commonly with Croix, book 7, number 358. 286. — "4. You do not incur excommunication I. If you read books of Catholics" that contain the words of heretics, even if you read them with the intention of learning heresy. Laym. book cited, from Navarre, Sanchez, etc. (This is common with Azor, Suarez, Bonaventure, and Pignat, in Croix, book 7, number 335.) "II. If in the book of a Catholic" author, or another, this bulla is not sufficient, and you read additions, "scholias," or notes of a heretical author: which, however, Suarez, volume 5, book 21, section 4, limits, unless the scholias were so extensive that, rather than from the text, the book seemed to consist of them. Laym. book cited, from Navarre,

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Sanchez, etc. The question is asked: Does the one who reads the scholias of a heretic in a Catholic book incur excommunication? Suarez and Krimer, in Croix, book 7, number 334, affirm, if the annotations are greater than the book, because such a book is rather that of a heretical commentator, than that of a Catholic. Indeed, Croix believes that one incurs excommunication, even if the scholias are not equal in size to the book, because such books are more...

[*Latin ed. p. 405*]

They are to be considered because of the annotations, rather than the *catholica* text. However, Tamb. Dec. l. 2. c. 1. §. 7. num. 9, along with Sanch. and Bon. in Vivam q. 5. a 1. n. 8, *in fine*, who adhere to this view, state that the *Summa Theologica* is not to be called the book of Cajetan, even though the annotations of Cajetan surpass the *catholica* text of the *Summa*. However, Viva states that the reader of such a book is at least not subject to excommunication *non reservata Indicis*, which is imposed on those who read condemned books because of heresy, or suspicion of a false dogma, as is stated there in rule 10. Nevertheless, despite these considerations, I adhere more to the first opinion, if the scholia are so abundant that the book consists more of them than of *catholica* doctrine, as Pignatell. and others state in Croix l. c. 287. — "2. The philosophical and other books of heretics are not prohibited, as they do not contain heresy." Laym. l. c. n. 3. Indeed, it is probable that even those "which only incidentally contain heresy, not acting deliberately on the matter of faith," (It is more accurately said of error, as taught by Sanch. Dec. l. 2. c. 10. num. 25. Pal. d. 2. p. 40. n. 7. Bonac. d. 2. q. 5. p. 4. n. 19. and Salm. de cens. c. 4. p. 5. n. 72, *in fine*), "Sa, and Graff. in Laym. l. c. against Suar. and Sanch.," who confirm this for *Germania*, where the *bulla* is not received with such rigor. See Bec. 2. 2. c. 45. qu. 8. However, the reader of such books incurs excommunication *non reservata Indicis* if the books are prohibited where he is, which does not seem to have been the case in *Germania*, at least not with such rigor, as Laym. l. c. n. 8. states.

— It should be noted that Clement VIII, with the authority of Pius IV, forbade the reading of all books of heretics, until they are purged of heresy, and of the writings of those who promote heresy, even if they do not contain heresy, nor treat of religion, under excommunication *non reservata*, see Salm. ibid. n. 73. and Croix l. 7. n. 360. Also, books of any author who is not a heretic are prohibited because of suspicion of heresy, as in rule 10 of the *Indices*. Viva qu. 5. art. 1. n. 8. Also, St. Pius V, in the Constitution *Cum sicut*, forbade the reading or retention of books of any author suspected of heresy, which require expurgation, under excommunication *reservata Papæ*. In order to determine which books require expurgation, rules are given in the *Expurgatorio Romano*, see Salm. l. c. Furthermore, Pius V forbade under excommunication *reservata* any book on astrology

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or divination, see Salm. cited, n. 73. Also, in the *Indices*, all books that explicitly treat of obscene matters are prohibited, rules 2, 7, and 9. Croix notes, with Laym. *in fine*, that those who read obscene books sin gravely, if the material is serious, but do not incur excommunication. The same is said of those who read magical books; but Viva states more accurately in qu. 3. art. 1. n. 8, that they incur excommunication *non reservata*, because such books are prohibited in rule 9 because of suspicion of heresy.

[*Latin ed. p. 406*]

289. It is to be known that the Index established three classes of prohibited books. The first class contains all books of heretics which contain heresy, or which treat of religion. The second class contains books written by Catholics which are contrary to the faith, or to good morals, which (as Lupus states, p. 4, book 25, decree 4, article 4) are not considered prohibited until they are specifically included in the Index: understand, besides the books which are prohibited by themselves as will be explained shortly, that they are included in the Index. The third class contains books published without the name of the author; these are not all condemned (as Lupus rightly observes in the aforementioned passage), but only those which contain false doctrine; thus, we see that this practice is followed by virtuous and learned men; and this is also inferred from the bull *Speculatores* of Alexander VII, in which the Pope, speaking of this prohibition, says: "It often happens that many books of unknown authors, which are assigned to the third class, are much worse than those listed in the first and second classes." In the Index, in rule 2, all books of heresiarchs are prohibited, even if they do not contain heresy, nor do they treat of religion. Then, all books of heretics are prohibited until they are examined and approved by the Bishops. Also, vernacular Bibles, and books which discuss controversies between heretics, written in the vernacular language, are prohibited. Also, books which are openly obscene, and books of magic are prohibited. Hence, those who read or possess the books of heretics, or the writings of any author, under suspicion of containing a false dogma, are excommunicated.

290. The power to prohibit books throughout the entire world belongs to the Pope, and, in his place, to the Holy Congregation. However, Bishops and Inquisitors can prohibit books within their own territory. The Master of the Palace can also do so; but, as Bordon states in *Manualis Consiliorum*, section 48, number 5, only for the City and its district: for their prohibitions have never been publicly announced.

291. Croix states in book 7, number 346, that when permission is given to read books of heretics in order to refute errors, he who reads them out of curiosity would sin gravely (although he might be dispensed from excommunication), because then the purpose of the permission ceases; but this reasoning is not persuasive, firstly because the purpose of a precept does not fall under the precept, as we have said regarding fasting, book 4,

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number 4022; secondly, because the superior grants a dispensation for two reasons: firstly, because he considers that the danger of being led astray does not arise from the dispensation; secondly, because he hopes that the reading will be beneficial to him, or to others; therefore, if the second reason ceases, the first does not cease. But can one read a prohibited book without permission, if he is morally certain that the reading will not harm him? Whatever others may say, it must be absolutely denied, as Croix states in number 375, at the end, and as Pal., Tol., Suar., Sanch., Tamb., etc., state, according to what is said in book 4, number 199, at the end.

292. 3. Those are excommunicated. 4. Who, in a sufficient quantity, reads only the preface, or the letter to the reader, or the index of a book, or a part of a book, in which there is no heresy, as Laym. states in the same book, and as Bon. states. (See what is said in number 284.) 2. It is also probable that he who hears another reading, at his command, is also guilty: because he reads through another. Laym. in the same book. Asor, etc., contrary to Sanch.

[*Latin ed. p. 407*]

(It is probable, as stated by Spor. p. 124, n. 43, and Croix, l. 7, n. 342, that one is excused from excommunication if one hears [a heretical text], provided that one does not induce another to read it. Indeed, Sanch. Dec. lib. 2, c. 40, n. 48, Pal. d. 2, p. 10, §. 2, n. 4, along with Con. Ugol. and Bon. d. 1, q. 2, p. 4, n. 41, and Sousa, Nav. et Reg., and also Fill. Tamb., among others, as cited by Croix, l.c., state that one is excused, even if one does induce another; and they consider this to be probable, as stated by Croix, ib., and Viva, q. 5, art. 1, n. 9. And Spor. l.c., and Sousa, and Stephan, as cited by Croix, also excuse from sin, if the one who hears [the text] incurs no danger of perversion from the hearing.) 293. — • 4. It is probable that one is not excommunicated for reading a heretical discourse, or an epistle published separately, because it is not a book. Laym. l.c., n. 5, citing Sanch. Thus, Sanch. Dec. l. 2, c. 40, n. 30, Holzm. p. 77, n. 77, also hold this view, as do Bonac. Castrop. and Lugo, as cited by Croix, l. 7, n. 337. But Suar. and Farinac., as cited by Salm. de censur. c. 4, p. 5, n. 72, hold the opposite view. See what is said here at the end of this number. But do those who read the manuscripts of heretics incur censure? Holz. l.c., and Croix, l. 7, n. 339, along with Suar., Sanch. Dicast., Stoz, Pignat., Stephan, and others, generally assert this. But Viva, ad prop. 45, Alex. VII, n. 40, Sporer, p. 123, n. 39, and Azor, Barb. Tamb., as cited by Croix, deny this, considering it probable that, because manuscripts are truly not books, they are treated more leniently than printed books, which are more readily available and more frequently read. Sylvius (as cited by Croix) holds the same view, saying: "Manuscript books can be given to be read, for they are only prohibited from being given to be printed." Sylvius also reports that this has also been declared by the Sacred Congregation. But, despite these considerations, I

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adhere more to the first opinion, both because it is more common, and because manuscripts also come by the name of books, as books were called before the invention of the printing press, and even now, the registers of baptisms, marriages, etc., in the Rituale, are commonly called books. On the contrary, Croix states that the Sacred Congregation does not sufficiently prove this. Furthermore, Salm. ibid., n. 73, in the notes, points out that in the Roman Index of Prohibited Books, published according to the decree of the Council of Trent, it is forbidden under excommunication (though not reserved) to read all writings composed by heretics, even brief ones, and even if they do not contain heresy, until they are examined and approved. 294. — • 5. One line or even two lines are not sufficient. Indeed, according to Sanch. Rodr. and Sa, not even an entire page, even from a large volume; which, however, Bon. and Laym. l.c. do not concede; although here, it is admitted that this can serve for the confessor to prevent the continuous commission of mortal sin, and thus to prevent the excommunication of one who reads a single page, either for a good purpose, or even out of curiosity. • (See the statements above, n. 284. See Requir. III.) 295. — • 6. One does not incur [punishment] if books are kept for a short time.

[*Latin ed. p. 408*]

g. For one or even a single day, because, just as with material things, a brief period of time is excusable. Laym. n. 7, citing Graff, Sayr, Sanch, etc. This is quite probable, as Bonaventure also states in d. 6, q. 2, p. 3, n. 45; Holzmüller, p. 178, n. 77; Dic. 40; and Palearius, tr. 4, d. 2, p. 40, n. 40. Furthermore, Palearius and Viva, q. 5, art. 4, n. 9 (contrary to Suarez), also admit this, even if someone retains the book for that short time, intending to keep it, because, although he may sin, he does not incur excommunication; for he is not considered to be notably retaining it. Indeed, Sanchius, Decr. l. 2, c. 40, n. 65; Laym. l. 2, tr. 4, c. 45, n. 7, along with Sayr and Graff, and Pignatelli and Strozzi, as cited by Croix, l. 7, n. 354, excuse him who retains the book for a longer period, awaiting a suitable time to return it to the superior, or to someone else who has permission to receive it. 296. — "7. Ignorance, even gross ignorance, is an excuse, if one does not know that the book is heretical, or that it treats of religion. Laym. n. 3. See Sanchius, l. 2, Mor. c. 40, n. 3, and l. 9, de matr., d. 32. Generally, Doctors teach that one does not incur censure for reading, or for retaining a book, through gross ignorance of the fact or of the law, because in the bull, those who read knowingly are condemned, etc.; thus, besides Busembach, Laym. and Sanchius, Bonaventure states in d. 4, q. 2, p. 4, n. 8; Holzmüller, p. 177, n. 76; Dic. 2; and others, generally; and this is in accordance with what was said in n. 47. But does affected ignorance excuse? See n. 48 and l. 6, n. 1424. However, no excuse is given to him who reads or retains, knowing from public reputation, or at least from a trustworthy person, that the book is prohibited, as Lugo, Sanchius, Bonaventure, and others commonly state,

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along with Croix, l. 7, n. 345. 297. — "8. One is not excused who retains the book, either in another's house, or under another's name, or with the intention of not reading it; nor is one excused who states that it is not wicked, nor that it is not to be burned. Nor is one excused who prevents it from being burned, or who defends it for the sake of discussion. Thus, Bonaventure, who nevertheless excuses him who praises the author's style, or his genius, or the good doctrine that is in it, but not to the extent that it is in it; for example, if he says: 'This book would be good if it did not contain heresy'; because such a statement does not defend. See Laym. l. c.; Bonaventure, d. 2, q. 5, p. 4. 298. — By common opinion, Suarez, d. 20, sect. 2, n. 21; Sanchius, l. c., n. 52; Palearius, tom. 4, de Fide, d. 2, p. 40, §. 2, n. 7; Roncaglia, de cens., p. 90, q. 2, r. 4; Salm, de cens., c. 4, p. 5, n. 74; Croix, l. 7, n. 347; and Bonaventure, d. 4, qu. 2, p. 4, n. 5, along with Ugolini, Graff, and Sousa, teach that he does not escape excommunication who deposits a heretical book with another, not by relinquishing ownership of it; for he who retains ownership is still considered to be retaining the book, since he can reclaim it whenever he wishes. The same should be said, along with Croix, l. c., from Pignatelli and the common opinion (contrary to Duard), regarding all other prohibited books, concerning which see proposition 45, condemned by Alexander VII, where it states: 'Prohibited books, until they are purged, can be retained, as long as due diligence is used to correct them.'

[*Latin ed. p. 409*]

It is also to be said of the one who retains another's book in deposit, as a loan or pledge, as stated in Psalm 119, verse 164, and in Croix, book 2, number 347, with Pignat and Duardo. However, Croix, number 352, with Verijus, states that it is well to deliver the book to a sequestered place, which is usually designated in each monastery. Furthermore, if someone were to deposit a book with one who has permission to read it, with an express agreement not to return it, so that the other is not obligated to return it except after purification, or after obtaining permission, I would not condemn such an action, because in this case, the danger of reading seems to be adequately mitigated; and even less would I condemn it if the person were to give the book to one who has permission to read it, under the condition that it be returned if the giver himself obtains permission.

299. — However, whoever possesses a heretical book is obligated to deliver it to the Inquisitors, by order of Julius III and Pius IV. Hence, Suar, Barb, Dicast., etc., state in Croix, book 7, number 355, that one incurs censure if he burns it in a place where the Inquisition is active. But Salm, ibid., number 74, and Croix, number 355, with Sanch, Filliuc, and Pignat, excuse this action, because, when the book is burned, it cannot be said that it is retained. Nevertheless, Julius III, in his bull "Cum meditatio," expressly forbade, in virtue of obedience, all those who possess prohibited books

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of any kind, to tear them or burn them, ordering that they be delivered to the Inquisitor or Bishop. The faculty of reading prohibited books can only be granted by the Pope, or the Sacred Congregation of the Index, or by a council. Only in the case of great necessity, as stated by Viva, question 5, article 1, number 40, can it be granted by a Bishop. The question arises, whether Bishops themselves can read prohibited books? It seemed to be affirmed, because all Bishops, where there is no formal tribunal of the Holy Office, are born Inquisitors, who are empowered to proceed in the ordinary way against those who are guilty of offenses against the faith. But it must be entirely denied, as stated by Sylvio, volume 3, question 2, article 3, conclusion 2, at the end, in Barb, de pot. Ep., page 3, note 90, number 8, and in Bon, volume 3, distinction 1, section 2, page 4, number 40, based on the bulls of Julius III, "Cum meditatio," and Paul IV, "Quia in futurorum," and Pius IV, "Cum pro munere," which, as stated by the aforementioned authors, forbid both Bishops and Inquisitors from reading prohibited books, except for (the exception being) the superiors and commissaries of heretical depravity. By "commissaries," are meant only those Inquisitors to whom a particular cause has been entrusted, and who can only read books pertaining to that matter, and only for the duration of the commission, as written and explained by Bon, ibid.

300. — Primarily, heretics, and their supporters, and those who receive them, incur papal excommunication, as stated in the first clause of the bull "Cœna." Therefore, first, we speak of heretics, and then of their supporters. In order for a heretic to incur this excommunication, it is required that: 1. The heresy be formal, that is, with an error in understanding, and with pertinacity, as stated in Busemb, book 3, number 49. But one is said to be pertinacious—

[*Latin ed. p. 410*]

He who adheres to his opinion, even though he already knows that it is contrary to the doctrine of the Roman Church, incurs this censure. Thus, St. Thomas [Summa Theologica] 4, part I, question 32, article 4; and Salm [Tractatus de Censure], chapter 4, page 4, number 49.

— But the question arises: Does one incur this excommunication who errs through culpable ignorance? If the ignorance is merely passive, the Doctors, such as Tollet, Sanchez, Bona, Azor, and Sayr, and many others, agree with Salm, ibid., number 50. The reason is that this censure is not incurred unless one is a formal heretic; but for formal heresy, true knowledge of the error is required; otherwise, the pertinacity, as mentioned above, is lacking.

It is doubtful whether one who errs with affected ignorance incurs this censure. Canus, Valois, and Navar are in favor of this, according to Salm, de cens., chapter 4, page 4, number 51. But it is more probable that Palearius, in his *Tractatus*, 4, part I, chapter 3, section 2, number 3, agrees with Azor,

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Arraganes, and Farinacius, and with Salm, ibid., number 52, along with Concinius, Suarès, Sayr, Bannier, and others. The reason is that the Church does not contradict one who does not know that he is contradicting the Church, but who does so through some ignorance; and therefore, he cannot be said to be pertinacious against the doctrine of the Church.

— The question is asked: Does one incur excommunication as a formal heretic who doubts concerning matters of faith? Whatever others may say, and many speak too obscurely, it must be said, with the common opinion, that if anyone positively doubts about some dogma of faith already defined by the Church, judging it to be uncertain because of opposing reasons, he is undoubtedly a heretic, and incurs excommunication, as is stated in chapter 4 of the De Haereticis: "He who is doubtful in faith is an infidel." Conversely, if one were to have a negative attitude towards some article, suspending judgment, and turning to other things, lest he tire his mind, or in order to apply himself to another thought. However, it must be noted that if he deliberately and pertinaciously suspended his assent, because he judged that contrary motives made the truth uncertain, then he must also be considered a heretic; for he truly and positively doubts the truth of the faith, when he forms a deliberate and pertinacious judgment that not all dogmas are certain, which are presented by the Church as certain; thus, C. de Luggio, volume 3, chapter 20, on faith, number 46; Sylvère, volume 3, in 2, 2, question 44, article 4; Wigand, *Tractatus*, 7, examination 3, question 14; Antoninus, *Tractatus de Virtutibus Theologicis*, chapter 3, question 6; Salm, *loc. cit.*, numbers 51 and 55; Cuniliat, *Tractatus*, 4, chapter 4, preface, chapter 2, section 3, number 4; Natali Alexander, *De Sacris Ordinationibus*, book 4, article 9, regulation 23; Bonaventure, *De Censure*, book 2, question 5, page 4, number 3; Council of Constance, book 3, discourse 4, chapter 9, number 3; and others.

— It is required that the internal error be manifested externally through words, or signs, either by themselves or by the circumstances, which demonstrate heresy, as is commonly stated by Layman, book 2, *Tractatus*, 4, chapter 14, number 4, and by Salm, de cens., chapter 4, page 4, number 48. Hence, Layman teaches that one does not incur this excommunication: 1. He who is a purely mental heretic. 2. He who abstains from Mass, from fasting, from adoring the Sacrament, even because he is a heretic; for these things...

[*Latin ed. p. 411*]

1. One does not incur excommunication for error, unless it is clearly manifest from the circumstances, or is attributed to forgetfulness, or to a corrupt conscience.

2. He who says: "There is no God," tacitly denies Christ; or he who writes this in an unintelligible character. The reason is that, for excommunication to be incurred, the words or signs must, of themselves, express heresy.

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3. He who asserts that he previously followed heresy, or that he intends to follow it in the future: for he is not judged a heretic in the present; thus Laym, n. 4, with Azor, and Sanch. 304. – Requirement III. For the act of heresy to be morally wrong; therefore, he does not incur excommunication who manifests himself in order to seek counsel.

4. It is required that he manifest his heresy with the intention of professing it, as taught by Laym, in the aforementioned place. Otherwise, in all these cases, because heresy is reserved only for the purpose of excommunication, it can be absolved by any confessor, just as the excommunication attached to it under another law, namely, from c. "Christus, etc." concerning excommunications, where a general excommunication against heretics has been imposed, but not reserved; thus, very commonly, the Doctors say. See Salm. dict. n. 48. 305.

5. It should be noted that, for excommunication to be incurred, it suffices that the manifestation of error be done even secretly, so that it does not become known to others; as is certain, and in common with Salm. tr. cited, c. 1, p. 41, n. 144, in fine, and Azor, Avila, and Corn. ibid., and others, throughout. Moreover, if the manifestation is notorious, the heretic is still not to be avoided, unless he is also specifically declared, and furthermore publicly denounced, Salm. ibid., c. 4, p. 4, n. 48, in fine, according to the aforementioned n. 436.

6. It should be noted that those who fall into heresy, unknowingly and invincibly, do not incur excommunication, according to the aforementioned n. 47.

7. Subsequently, those who believe in heretics also incur this excommunication, that is, those who externally manifest their agreement with their errors, e.g., if someone says: "I believe what Calvin believes," or "that Calvin was a holy man." Also, those who favor [heretics], that is, those who favor heretics either by omission, namely, by omitting, when they can and are bound by duty, to apprehend, guard, or punish the heretic; or by commission, by praising him, or helping him to escape. Also, those who receive [heretics], that is, those who receive or hide a heretic (even once), so that he may escape the penalties of his heresy. Also, those who defend [heretics], that is, those who defend his errors, even if they inwardly think otherwise, or who prevent him from being apprehended or punished by a judge; thus Suar. de censur. d. 21, sect. 2, n. 6, Sanch. l. 2, c. 40, n. 2, and Salm. de cens. c. 4, p. 5, n. 63, with others, commonly.

8. Question: Here, I. Do those who favor [heretics], etc., as mentioned above, incur excommunication, and other penalties, if they favor heretics not for the motive of favoring heresy, but for the reason of consanguinity, friendship, or the like? The first opinion affirms this, and Pal. de cens. d. 3, p. 2, n. 5, Tolet. in expos. bullæ Cænæ c. 1, n. 2, Viva de cens. q. 5, art. 2, n.

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7, in fine, also Sayr., Suar., etc., and Salm. ibid., n. 67, hold this view.

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Second Opinion: This opinion, which is highly probable, is held by Sanchez, Book 2, Chapter 40, paragraph 5; Bonaventure, Book 2, Question 5, page 3, paragraph 2; and Salmeron, ibid., paragraph 68, along with Soto, Azor, Arregui, Fagnon, etc. Layman considers it probable, because when the Church excommunicates those who favor heretics, it is only considered to condemn those who favor the heretic to the extent that the heretic is a heretic. Therefore, it is probable that parents, children, and even brothers who receive a heretic are excused from excommunication, as taught by Layman and Salmeron, Book cited, at the end, 308. Question II: Does one incur excommunication for receiving a heretic, even if, nevertheless, that person is already handed over to the judge? The first opinion, held by Sanchez, Decrees, Book 2, Chapter 40, paragraph 9; Bonaventure, Book 2, Question 5, page 3, paragraph 3; and Suarez, Book 21, Section 2, paragraph 8, and Fillius, Leander, and others, as cited by Salmeron, ibid., paragraph 69, considers this to be probable and denies it. The reason is that those who favor or receive heretics are excommunicated in order to promote the heresy; therefore, if it happens that the heresy is not promoted, the excommunication does not apply. The second opinion, which is more pleasing to me, and which is held by Palearius, Book 3, page 2, paragraph 5; Sarius, Book 3, Chapter 5, paragraph 4; and Duard and Graff, as cited by Salmeron, on censures, Chapter 4, page 5, paragraph 70, affirms this. The reason is that by the very fact that someone receives a heretic, the effects of favor follow, and that person incurs the censure, because in fact he is already promoting the heresy, preventing the accused from being apprehended; at least during that period of time in which he keeps him hidden, so that it does not cease after his capture, the effects of the reception. 309. — Furthermore, excommunication is incurred by those who seize the goods of Christians who are shipwrecked, whether they are on ships, or thrown into the sea, or found on the shore. However, it is required that the acceptance be unjust, and with certain knowledge that they are the goods of the shipwrecked. Thus, Viva, Question 5, article 2, paragraph 3. It is also required that the goods not be considered abandoned; therefore, the one who takes paper, flour, sugar, and similar items that have been thrown overboard is excused, because such things commonly perish in the sea as soon as they are thrown. Likewise, he who takes goods that have been lying on the shore for a long time is excused, because it is reasonably presumed that at that time they are considered abandoned by their owners. Thus, Viva, Book cited, and Salmeron, ibid., page 6, paragraphs 80 and 84. 340. — II. Those who, on their lands, impose *pedagia*, that is, taxes for the passage of people or things, or for the maintenance and protection of roads, or *gabellae*, that is, impositions for the delivery and sale of goods,

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without having a privilege to do so, incur excommunication. However, all supreme rulers have this privilege, such as Popes; and kings, republics, and universities, can also legitimately collect taxes to provide for the needs of their citizens, as stated by Viva, Question 5, article 2, paragraph 4, and Salmeron, ibid., paragraphs 82 and 83, along with Vasquez, Dictionary, etc. See other cases in Viva and Salmeron, Books cited. 341. — III. Pirates who kill or plunder Christians in ecclesiastical waters incur excommunication. IV. Those who forge apostolic letters.

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V. Transmitting arms, or materials for arms, to hostile enemies, or to those declared heretics.

VI. Unjustly preventing the conveyance of provisions to the Roman curia.

VII. Harassing those who approach, or depart from, the Roman See for matters pertaining to it.

VIII. Harassing pilgrims who visit Rome for the sake of devotion.

IX. Harassing, or expelling, Bishops, Legates, or messengers from their dioceses; nor also commanding such actions, considering them valid, approving of them, etc.

X. Striking, or despoiling, those (or their representatives) who petition the Roman curia for their affairs.

XI. Appealing under a private pretext to secular courts in ecclesiastical matters, in order to impede apostolic letters.

XII. Those who, by secular authority, or under the pretext of exemption, draw spiritual causes, or those annexed to them, away from ecclesiastical judges, etc., as stated in Viv. lib. 5, cap. 2, no. 43.

XIII. Those who, by any means, compel ecclesiastical persons to appear before a secular tribunal, etc. See Viv. no. 45.

XIV. Preventing ecclesiastical judges from exercising their jurisdiction.

XV. Usurping jurisdiction and the fruits of benefices.

XVI. Imposing burdens on ecclesiastical persons. Those, however (it should be noted), are bound to contribute when collections are imposed for the repair of roads, fountains, etc., the utility of which directly pertains to them also; Viv. no. 48, with Abbot and Moller.

XVII. Those who, without jurisdiction, intervene in criminal cases against clerics.

XVIII. Those who usurp jurisdiction in the lands of the Roman Church. Finally, according to the bull of Clement VIII, all those who absolve from excommunications incur an excommunication still reserved, except those who have the faculty to do so, as stated in Viv. lib. 2, at the end.

CHAPTER III. OF SUSPENSION, AND DEGRADATION.

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QUESTION 1. What is suspension, in how many ways can it be imposed, and from what can one discern the nature and extent of the suspension?

312 What is suspension? And who can suspend, or be empowered to suspend?

313 Does one gravely sin by performing an act from which one is suspended?

Question 1. Does one incur irregularity if the suspension is for a time?

Question 2. Does a Bishop suspended from ecclesiastical functions incur irregularity by exercising those functions? And what if he celebrates Mass solemnly? Does a priest suspended not validly absolve? What if he is tolerated? Or if he is suspended only from his order?

315 In how many ways can suspension be imposed?

316 From what can the nature of the suspension be determined?

Question 1. Can one suspended from a benefice, if he is poor, retain the fruits?

Question 2. Is one suspended from a benefice also suspended from benefices which he possesses in another diocese?

317 Are those suspended from office individually suspended? And do these incur irregularity? Must suspension be imposed in writing? Vol. V. 23.

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219. — • Response 4. Suspension is a censure by which a cleric is prohibited from exercising certain ecclesiastical functions. See Bon. d. 3. p. 4. Laym. l. 4. tr. 5. p. 3. c. 4. Therefore, it is resolved: 1. Only a cleric can impose suspension. 2. Those who can impose censures can suspend. 213. — • In its own nature, and unless the matter is trivial, exercising an act prohibited by suspension is a grave sin, and therefore induces irregularity. However, if a suspended cleric is tolerated, and is not permitted to perform such functions, but is required by others for the sake of utility, he probably does not sin, since others are lawfully requiring his services. Indeed, even if he has been expressly denounced and is not tolerated, others are not bound under mortal sin to avoid him, unless they are judged to be cooperating in the act for which he is suspended; therefore, attending his Mass will not be a mortal sin, provided one does not thereby assist him. Thus, it is probable that Avila, Henry, Suarez, and Sayer state this, according to Bon. d. 3. p. 4. n. 4, as well as Laym. l. c. 4. n. 7. (And so, Pal. d. 4. p. 6. n. 5, Holzm. p. 395. n. 252, and Salm. de cens. c. 5. p. 2. n. 14, along with Conc. Avila, etc., rightly add that it is entirely licit to attend Mass offered by a suspended priest, contrary to Cont. Tourn. tr. de cens. part. 2. cap. 2. art. 4. Quær. 4. with Bonac.). However, Holzm. limits this, unless a scandal would intervene. It is certain among all that a suspended cleric sins gravely if he performs an act prohibited by his suspension, see Salm. ibid. n. 42. However, he is

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excused: 1. If he performs a non-sacramental rite, or a sacramental rite, but not solemnly; Salmant. ibid. p. 3. n. 24 and following, and Cont. Tourn. loc. cit. Quær. 3. with S. Anton. Hab. Sayer, etc. (contrary to Suarez and Navarr.). See the statement in l. 6. n. 38. v. Objic. 2. He is excused 2. at least from grave guilt, if he performs the act through ignorance, or through grave fear, or in a trivial matter, such as if he had been suspended by a jurisdiction, or by an order, and performed a minor act of jurisdiction, or blessed a table: otherwise, if he blessed water, marriages, or fruits, etc., according to the solemnities of the Church; Bon. d. 3. p. 4. n. 6. Holz. p. 394. n. 248. Cont. Tourn. loc. cit. v. From these, and Salm. c. 5. n. 43. 314. — But here, there is doubt: 1. Does a cleric incur an irregularity by performing an act from which he had been suspended, if the suspension had been for a determined period of time? There are three opinions: The first opinion denies this, and Gabriel, Avila, and Villal hold this opinion, according to Salm. de cens. c. 5. p. 2. n. 43, who believe it is probable with Dian., because (as they say) a suspension for a determined period of time has the nature of a pure penalty, which does not induce irregularity.

[*Latin ed. p. 415*]

The second opinion, which is more common, affirms that a suspended cleric does incur irregularity by exercising his office, citing authorities such as Suar. d. 26. sect. 2. n. 3; Bon. d. 3. part. 4. n. 6; Pal. dub. 4. p. 6. n. 5; Conc. Tourn. de censur. part. 2. cap. 2. art. 1. v. Quer. 3. in fin.; Escob. l. 5. n. 96; and Viva qu. 6. a. 4. n. 5. This is supported by the statement in c. 1. de sent. et re judic. in 6, where it is stated that a cleric who, after being temporarily suspended, nevertheless ministers, is expressly declared irregular. However, Viva and Cont. Tourn. ll. cc., and Salm. ibid. p. 1. n. 8, limit this, stating that this applies only if the suspension is publicly declared, because, as we will say in n. 347, it cannot be presumed that a bishop intended to commit an offense by publicly declaring a suspension.

A third opinion, which Ronc. p. 106. q. 5. r. 2. considers probable, along with others, and which I believe to be absolutely more probable, distinguishes and states that if the suspension was imposed by a decree or statute for a future crime, or even a past crime with continuing consequences, then the one who violates the suspension more truly incurs irregularity, as is evident from the aforementioned text. Conversely, if the suspension was imposed by a human authority through a sentence, solely as a punishment for a completely past crime, then such a suspension is merely a penalty, not a censure, as stated in n. 52. For a censure, being a medicinal penalty, cannot be imposed for a completely past offense, as we have said in n. 54. Therefore, when someone violates such a suspension, they incur no irregularity, which is incurred by those who violate penalties, but irregularity is incurred by a censure. This opinion is not contradicted by the aforementioned text, because it speaks not of a suspension imposed by a human

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authority through a particular sentence, but of a suspension imposed by law through a general statute, which refers to future crimes; therefore, such a suspension was a true censure.

Doubt 2: Does a bishop suspended from his pontifical functions incur irregularity if he exercises those functions, such as confirming, consecrating chalices, etc.? Sylv. v. Suspensio, §. 5, and Innoc. Abb. Archid. Socin. etc. ap. Eag. l. 1. in c., and Vel non est compos, de temp. ordin. n. 17. ad 29, deny this, arguing that the episcopate is not an order, but rather an extension or complement of the priestly order, as held by Salm. de ordin. c. 1. p. 1. dub. 2. n. 26, along with Soto, Gonet, and others, based on D. Thom. Suppl. q. 40. art. 5. They infer that the bishop, by exercising these functions, does not incur irregularity, since irregularity is incurred by those who are censured, only when they exercise the sacred order. However, Nav. c. 27. n. 163, Bon. d. 3. p. 4. n. 6. v. Tertio, along with Major. and Alter., and Fagn. l. c. n. 36, along with Patud. Ang. etc., more plausibly affirm this. The reason is that, even if the opinion that the episcopate is merely an extension of the priestly order, and not a distinct order, were true (which many deny, as seen in Salm. l. c. n. 23), it cannot be denied that the exercise of episcopal authority is an act of the sacred order, if not distinct, then at least an extension of it; therefore, the bishop is truly exercising an act of the sacred order. Moreover, the same D. Th. l. c. states that, although the episcopate is not an order in relation to...

[*Latin ed. p. 416*]

Regarding the real presence in the Body of Christ; however, there is a true order with respect to the power in the mystical Body; therefore, the first opinion does not seem sufficiently probable. If, however, a Bishop, suspended from his pontifical functions, celebrates Mass solemnly in the pontifical vestments, it is certain that he sins, as rightly say Fill. tr. 17, c. 2, n. 28; Sayr. l. 4, c. 4, n. 43; and Renzius p. 643, q. 4. But does he also incur irregularity? Angel. v. Suspensio 3, n. 3, Nav. Bon. and Fagn. ll. cc. argue that he does, because such a celebration is an act proper to the episcopal order, which cannot be exercised except by a consecrated Bishop. On the other hand, Laym. l. 4, tr. 5, c. 3, n. 4, with Sylv. Cov. and Avila, and Diana p. 5, tr. 10, r. 4, with Joann. Præpos., argue more probably that he does not, because it is the common opinion of Doctors. Their reason is that the Bishop, by sacrificing, does not exercise a substantial act of the episcopal order, but an act of the sacerdotal order, from which he is not suspended; and that the celebration is performed with pontifical vestments by accident; and that irregularity is not incurred unless in the exercise of an act of the order that is prohibited. And this opinion is expressly held by D. Anton. 3, p. tit. 27, c. 3, §. 4, v. If he is suspended, with Hostiensi, saying: "A Bishop suspended from pontifical functions, if he celebrates in pontifical vestments, will not be irregular, because the pontifical vestments are not of

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the substance of the celebration, nor should we judge anyone to be irregular unless we find it expressly stated." Moreover, the same Fagn. l. c. in c. Quæsitum, de cohab. cler. n. 45, with Archid. etc., says that a cleric suspended for a crime incurs irregularity only when the canon expressly states it, because otherwise, suspension is understood broadly, only with respect to himself, namely, that as unworthy, he is prohibited from ministering. 4. A suspended cleric validly absolves, because he does not have jurisdiction. (Thus Salm. de cens. c. 5, p. 2, n. 45. Conversely, if he is tolerated, because here he would validly exercise jurisdiction; although illicitly, if he were not required; Salm. ib. A Bishop suspended from the order is not suspended from jurisdiction. Thus S. Th. 3, p. qu. 22, art. 3. Salm. ibid. n. 16, commonly.) 345. — • Resp. 2. Suspension 4. Some suspensions are for a certain time, after which they expire: others are absolute, or indefinite, and remain until they are removed by absolution. 2. Some are from office, whether it be of the order or of jurisdiction; others are from a benefit; others are from both. 3. A suspension from office is either total, or only partial, namely, from a function of the order, or of the jurisdiction. Likewise, a suspension from a benefit is either absolute, or only from certain functions of it, which are related to it. Laym. Bon. ll. cc. 316. — • Resp. 3. The quantity and quality of the suspension must be gathered from the words in which it is imposed: and, as in a serious matter, they should not be extended further than what they properly signify.

[*Latin ed. p. 417*]

Here follows the translation:

Wherefore, it is resolved: 4. An absolute and complete suspension prohibits all exercise of office arising from either order or jurisdiction; and consequently, he cannot celebrate Mass, nor validly excommunicate, confer benefices, etc. However, a suspension limited to a particular benefit, e.g., from the order alone, or from jurisdiction, deprives him only of the functions of that specific office. Thus, a Bishop, for example, suspended from jurisdiction, although he cannot excommunicate, absolve, or delegate, can nevertheless exercise acts pertaining to his order, such as consecrating churches, ordaining, etc. (Bonifacius, loc. cit., 2). A person suspended from a specific function of the order, e.g., from the administration of sacraments, is not suspended from the sacrifice (the Mass). Similarly, a person suspended from the order can nevertheless confer the tonsure, because it is not included within the order itself (Bonifacius, p. 2, n. 6). 3. A suspension from an office simpliciter (absolutely) does not imply a suspension from the benefit, or the fruits thereof. However, he must be supplied by another who can act in his place, so that he may receive the fruits. (Bonifacius, n. 40, citing Navar, Suarez, Henricus, Fillius, etc.). (It is commonly held by all that a person suspended from office is not suspended from the benefit; thus, Suarez, d. 26, sect. 3, n. 4; Palatinus, p. 5, §. 4, n. 5; Controversiae

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Tournenses de censuris, part. 2, cap. 2, art. 4, v. collig.; Antonius, p. 663, n. 2; and Salmeron, de censibus, c. 5, p. 2, n. 20, with Sanchez and Avila, etc., commonly citing c. 40 de purg. can. and c. 40 de vita, et hon. clericorum; Fagnanus agrees in l. 3, in c. Quæsitum, de cohabitatione clericorum, etc., n. 30). But Fagnanus and the Glossa in Clementine, De Paenis, limit this, stating that it applies primarily if the crime is enormous, as is evident from c. Inter 40 de purg. can. Secondly, it applies if the accused person contemns the suspension, namely, by remaining in it for a year, as stated in c. Cum bonae, de aetate, et qualitatibus, etc.) 4. A person suspended from an order does not appear to be suspended from the benefit; because the benefit is not founded on the order. However, Bonifacius states that he is indirectly suspended from the fruits thereof, because, since he cannot perform the office, he cannot receive the fruits. See below. 5. A person suspended from a benefit, although this implies that he is suspended from receiving the fruits thereof, is not suspended from the office, whether of jurisdiction, or of the order, even that which pertains to him by reason of the benefit itself. Therefore, he is bound to read the Divine Office, and to perform the other obligations of the benefit, even if he does not enjoy the fruits, because this he must impute to himself. However, he is not deprived of the advantages that come from anniversary stipends and Masses, nor of that which is given on account of the personal obligation of the cleric, because these are not fruits of the benefit. This is different in the case of daily distributions. (Thus also Navar, Covarrubias, etc., apud Salmeron, de censibus, c. 5, p. 2, n. 21. But Palatinus, p. 5, §. 4, n. 7, and the same Salmeron, ibid., with Sanchez, Avila, Henricus, etc., contradict this, because the penalties are not to be extended where there is no fault).

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"These [rules] are expressed, as nowhere else are they expressed; 'although from these, or from others,' the fruits of a benefice may benefit another, if the latter cannot be supported from elsewhere. Bonac. 'l. c. n. 12. Sayr. Suar. Filliuc. etc.'"

"Doubt 4. Can one who is suspended from a benefice retain the fruits for himself, if he is poor? It is answered affirmatively, if the suspension is imposed as a penalty for a crime entirely past (see above, l. 4, n. 672); otherwise, if it is imposed due to contumacy, because he should not be assisted by the Church who voluntarily despises the discipline of the Church, when he can freely withdraw from his contumacy; thus Suar. d. 27, sect. 2, n. 3. Fill. tr. 27, n. 53. Renzius p. 644, q. 7, with Diana p. 5, tr. 40, r. 3, with Sayr. Turrian. and Corn. Gordon. Con. and Avila. However, Cont. Tourn. in the cited passage, v. Dico 2, Diana, and Renzius, with P. Nav. Avila, Pelliz. and Hurt., say that although the holder of a benefice is obligated to restore the fruits, if he is secretly suspended and has already performed the duties due, he may retain for himself the portion that he should have given to a

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substitute, because these are not the fruits of the benefice, but the wages of labor; see above, l. 4, d, n. 672."

"Doubt 2. Is one who is suspended from a benefice also considered suspended from the benefices he holds in another diocese? Sayr. absolutely denies this in lib. 4, cap. 6, n. 21, because (as he says) the Bishop has no jurisdiction outside his own territory. Others, however, make a distinction, and deny it if the suspension is imposed by a person, but affirm it if it is imposed by law, because the law should have force everywhere; thus Decius, and others, apud Sayr. l. c. Still others, more commonly and with greater probability, as Renzius l. 4, p. 645, and Cont. Tourn. l. c. v. Dico 4, with Pont., hold that a suspension includes all benefices if it is imposed by law; but if it is imposed by a person, it is understood to apply only to the benefices of the same diocese, when it is imposed by statute; otherwise, if it is imposed by sentence, provided that the Bishop expresses his will to suspend from all benefices, because, although the benefices of another diocese are not subject to him, the person who is suspended is subject, and has the right to the fruits of the benefice; therefore, since the suspension prevents him from claiming his right, he is consequently suspended from all benefices. However, when the suspension is by a general statute, it is understood to apply only to the benefices in the diocese."

"Doubt 3. If one who is suspended acquires a new benefice during the suspension, is the collation valid? Bon. affirms this in d. 3, p. 2, n. 40, and Holz. p. 393, n. 140, v. Dixi, with Palao, and Mastrio, because benefices are granted for the sake of office; therefore, one who is suspended from a benefice is also suspended from acquiring a benefice, since he cannot exercise the duties of the benefice. However, Suar. more probably denies this in d. 26, sect. 3, n. 8. Laym. tr. 5, p. 3, c. 1, n. 4. Antoine p. 634, v. 2. Renz. p. 645, q. 9, and Diana q. 5, tr. 40, r. 7, with Cornejo, Gordon. Præpos. Conc. etc. These say that such a collation is indeed invalid, but not null; because no penalty should be imposed unless it is expressly stated in law."

[*Latin ed. p. 419*]

Nowhere is this penalty observed; indeed, from canon 8 of the De Aetate and Qualities, the opposite is deduced, since there, when someone had remained under suspension for four years, the Pontiff decreed that they should be deprived of benefits, both those acquired before and those acquired during the suspension; therefore, the collation had been valid. 6. A cleric suspended from a benefice can nevertheless choose, present, and confer a benefice, because, although these rights belong to him by reason of the benefice, they are not active rights of the benefice itself; precisely so, but rather of office and jurisdiction. Ibid. 7. A cleric absolutely suspended from a benefice, or order, without further specification, is understood to be suspended from all benefits, or orders, unless something else is stated. Ibid., n. 8. 8. An absolute suspension; it is understood to be from office and

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from the benefice. Laym., c. 4, n. 2, 347. — « 9. When a chapter, or convent, is suspended, the individuals are not considered suspended, unless they are in fault, says S. v. Suspensio, and Laym., l. c., c. 2, n. 3. » When the suspension is extended only to the community, it does not affect individual persons with regard to their particular duties, but only with regard to the offices or benefits of the entire community; thus, commonly, Bonac., d. 4, q. 4, n. 144; Holzm., n. 248; and Salm., de cens., c. 5, p. 4, n. 43 and 46, in fine, with D. Th. Avil, Henr., Diana, etc. If anyone performs functions that are forbidden to the community at that time, Pal., d. 4, p. 3, n. 3; Suar., d. 28, sect. 4, n. 4; Ronc., p. 106, q. 7, r. 2; and Salm., ibid., n. 47, with Conv. and Cornajo, do not incur irregularity, because that prohibition is not properly a censure, but rather an inability of particular persons to perform such offices. If, however, the suspension extends to the community and to the individual persons themselves, then it does not affect the innocent, but only the guilty; for no one can be excommunicated or suspended for the fault of another, as commonly taught by Suar., l. c., n. 2; Sanch., de matr., l. 9, d. 32, n. 9; Salm., ibid., n. 45, with Nav. Sot. and Pal. ae Escob., l. 51, n. 56, with Con. Avil. Henr. and Hurt. And it is clear from chapter 2, de Constit., and more clearly from chapter Quæsivit, de his quæ funt à major. part., where it is said: "Since sins must hold their authors, so that the penalty is not prolonged further than the offense reported." 10. If a prelate, with only his word, says to a priest, "I suspend you, e.g., from celebrating," it appears to be a simple prohibition, not a censure, because this is not licitly imposed unless in writing." (as n. seq. ad 2.) "However, a prelate should not be presumed to want to sin, unless something else is known about his intention; or unless religion has a privilege of imposing censures without writing. See Bon., de censuris in communi, d. 4, q. 4, p. 7." (Thus also Salm., ibid., p. 4, n. 48, with Nav. and Henr.)

[*Latin ed. p. 420*]

DOUBT II. What are the suspensions in particular; and who can absolve from them?

318 What are the more common suspensions of clerics?

319 What are the suspensions of religious?

320 What are the suspensions of bishops?

321 Can anyone suspend for a minor offense?

323 Who can absolve from a suspension?

318. — "Response: 4. The following are common suspensions: 1. Clerics are suspended by law if they receive sacred orders from someone other than themselves, or from their own diocese, or if they are not of the proper age, or if they have been dismissed, or without a title, or outside the proper times, or by jumping stages, or under censure, or finally, after a valid marriage; all of these are suspended from the exercise of their orders, unless

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they have acted without deceit, and if they use their orders, they become irregular. 2. One who excommunicates, suspends, or interdicts without a written document and without stating the reason, is suspended from entering the Church for one month; unless he is a regular prelate. 3. Clerics who knowingly choose an unworthy bishop or parish priest are suspended from benefices for two years. 4. One who ordains, and one who is ordained, simoniacally, are suspended from their orders. 5. Parish priests who join in marriage couples from another parish without permission. 6. Those who burden the churches entrusted to them with the debts of others. 7. Those who occupy the goods or revenues of the Church, a benefice, or another pious institution. 8. Those who commit sodomy, are simoniacs, incite or accept a challenge to a duel, are kidnappers, or give assistance to kidnappers. 9. Those who dispute on either side in a gathering of men and women concerning the Immaculate Conception of the Blessed Virgin. 10. Those who visit, if they accept money or gifts: if they are bishops, they are suspended from entering the Church; if they are lower than a bishop, they are suspended from office and benefice, until they restore double the amount. 11. An ecclesiastical judge (who is not a bishop), who does an injustice against justice and conscience to the litigant party. See Bonac. d. 3. p. 5. (Add 12. Those who deny absolution to a reluctant accomplice; these are subject to a suspension to be determined by sentence, as stated in the bull *Ubi primum* of Benedict XIV. See at the end of this work. Add 13. Those who celebrate Mass in the Greek rite, and Greeks who celebrate Mass in the Latin rite. Bull *Etsi Pastoralis*).

319. — "2. Religious: 1. Apostates who receive orders while in apostasy. 2. Those who admit someone to profession before one year of probation has been completed. 3. Those who do not wear the habit and clothing prescribed for them. 4. Those who introduce women into monasteries."

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320. — "3. Episcopus, ordinans non subditum, est suspendendus" a pontificalibus per annum; ordinans verò invitum, est suspendendus" per annum a celebratione pontificalium. 2. Admittens resignationes" contra formam praescriptam. 3. Intrans monasteria monialium sine" necessitate. Vide Fulgentius, vol. 17, cap. 5.

321. — "Resp. 2. Praeter has suspensiones aliae sunt ab homine," quae, si sint graves, requirunt culpam mortalem, v. g. ut quis suspensio datur ab omnibus actibus sui officii, vel fructibus unius anni. Potest" tamen aliquis ob peccatum veniale privari uno actu, v. gr. eligendi. Sed hic dubitatur, an ob peccatum veniale possit ferri suspensio? Affirmant Navar, cap. 27, num. 151 et 159; item Armilau, Med.; et Henricus, apud Escobar, lib. 51, n. 58. Sed veriùs et communissime negant Suarez, d. 28, sect. 4, n. 6; Sanchez, de mat., lib. 2, d. 32, n. 9; Palatinus, d. 4, p. 3, num. 4; Salmantinus, de censur., cap. 5, p. 4, n. 44; Elvensius, p. 444, n. 145, cum Fulgentius et Escobar, n. 59,

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cum Laymannus; Soto; Vasquez; Hurtado, si suspensio sit major, nempe ab omni usu officii et beneficii, vel ab aliquo eorum per notabile tempus, tunc enim requiritur mortale, quia poena debet cum culpa proportionari, unde esset nulla suspensio, si ob peccatum veniale imponeretur. Secùs verò, si suspensio esset partialis, nempe tantum ab officio, vel à beneficio, et ad breve tempus, ut Suarez, n. 2; Palatinus, n. 2; Salmantinus, de censur., cap. 5, p. 4, n. 44; et Bonaventure, d. 1, qu. 1, p. 3, n. 8, qui idem dicit, si suspensio esset totalis, sed ad valde breve tempus, putà ad diem, vel hebdomadam. Idem dicunt Sanchez, Decis., lib. 6, cap. 4, n. 47; Palatinus, tr., d. 1, p. 45, n. 3; et Salmantinus, de leg., cap. 2, p. 3, §. 1, n. 46, cum Suarez; Cajetan; Vasquez; Tapia, etc., si suspensio sit ferendae sententiae; nam contra, si sit latae sententiae, vel sit indita a jure, taliter ut incurratur sine alia monitione, non incurritur nisi ob mortale peccatum.

322. — "Resp. 3. Habens auctoritatem episcopalem potest absolvere" a suspensione non reservata: et communiter religiosi ex privilegiis" possunt absolvere ab omni suspensione in foro conscientiae: Episcopus potest absolvere ab omni suspensione juris, si Sedi apostolicae" specialiter reservata non sit. Laymannus, cap. 4, n. 2, ex Navar; Suarez, etc. Imo etiam ab hac, si proveniat ex delicto occulto, et non deducto" ad forum contentiosum. Bonaventure, d. 3, p. ult., ex Tridentino, sess. 24, cap. 6. Si suspensio sit imposita ad tempus, vel conditionate, v. g. donec, vel nisi restituas, tunc, termino transacto, decollatur suspensio sine absolutione, ut Salmantinus, de censur., cap. 5, p. 5, n. 53, cum Conciliarius; Palatinus; Avila; Henricus. Si verò sit imposita absolute, quisque confessarius potest eam absolvere, nisi sit reservata, vel nisi requirat satisfactionem partis. Cum autem fertur suspensio in communitatem, is tantum ab illa absolvere potest, qui in communitatem jurisdictionem habet in foro contentioso; Salmantinus, ibid., n. 52.

[*Latin ed. p. 422*]

DOUBT III. What are deposition and degradation? And by whom, and for what reason can they be imposed? 323.— Deposition and degradation are often confused with suspension (although, as stated in this book, number 3, they are not the same, due to the similarity they have with suspension, since both are imposed by ecclesiastical authority or by ecclesiastical benefit). However, they differ from suspension in that they remove the very root of the right and the title to the benefice, and this permanently, whereas suspension does not. Furthermore, deposition, in the general sense, is either verbal, which is absolutely called deposition, or real, which is commonly called degradation. 324.— Answer 4. Degradation is the deprivation of the exercise of offices and benefices, simply, totally, and without hope of restitution, done with certain solemnity, and with the loss of clerical privileges, both canonical and civil, so that the person is subject to the secular court. I said "exercise," because the order itself cannot be taken away. However,

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a degraded person is bound to the vow of chastity if he was engaged in sacred duties. • (And he would invalidly contract marriage, and would validly consecrate the Host; Salm. de cens. c. 5. p. 6. n. 60. with others), • and to the hours, unless these are a penalty to which he is condemned, e.g., galley service, or something else that prevents it. 325.— Answer 2. Verbal deposition is a similar deprivation, but without solemnity, and with both canonical and civil privileges retained. 326.— Answer 3. Clerics can be degraded by their Bishop, but not by those inferior to him; however, they can be deposed by the same, through a Vicar. 327.— Answer 4. Deposition can be imposed in cases expressly stipulated by law, and for crimes; however, only for more serious crimes, at the discretion of the judge. Layman notes that the crime must be enormous, that is, one of the greatest. Degradation can also be imposed only in very serious cases, such as, for example, the manifest crime of heresy, the forgery of apostolic letters, frequent sodomy, or a serious slander against one's own Bishop. See Layman here, volume 5, and Fill., volume 48, chapter 8. • (For only the Pope can grant dispensation to a degraded person; but the Bishop can also do so, if the crime is less than adultery; Salmant de cens. c. 5. p. 6. n. 68.)

[*Latin ed. p. 423*]

CHAPTER IV. ON THE INTERDICT.

QUESTION I. What is it, and of how many kinds?

328. What is an interdict?

329. Of how many kinds is it?

330. If a city is placed under an interdict, are its suburbs also subject to it? And are the churches of Regular Canons? Are those exempt from a general personal interdict? And if the clergy are placed under an interdict, are religious, or clerics who do not hold a benefice, also subject to it? What if citizens, or a city, are placed under an interdict?

328. — ANSWER. 4. An interdict is an ecclesiastical censure which prohibits the performance of divine offices, certain sacraments, and the use of ecclesiastical burial, to the extent that such is the case. I add that excommunication deprives [one] in the same way, to the extent that it is a deprivation of communion with the faithful; whereas a suspension properly impedes not that use, but the exercise of ecclesiastical power. See Layman, book 4, title 5, page 4, chapter 4. Bona, part 4, title 5.

329. — ANSWER. 2. An interdict is divided into four kinds: a local interdict, which immediately affects a place; a personal interdict, which immediately affects persons; and a mixed interdict, which immediately affects a place and its inhabitants. A local interdict differs from a personal interdict in that, in the former, participation in the sacred offices is prohibited to both natives and foreigners, not absolutely, but only in the place under interdict;

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whereas, in the latter, certain persons, or a community, are absolutely prohibited from participating in all places.

2. Both a local and a personal interdict are subdivided into a general and a particular interdict. A general interdict is one by which a general place, e.g., a city, province, or a general community, e.g., a college, etc., is prohibited. A particular interdict is one by which a particular place, or a particular person, or particular persons, are prohibited. Therefore, it follows that:

330. — 4. If a city is placed under an interdict, its suburbs are also subject to it, and if a parish is placed under an interdict, so too is the adjacent chapel or cemetery, because that which is accessory follows the nature of the principal. (Thus from c. Si civitas, from the decree Exc. in 6, where it is also stated that, if a city is placed under a general local interdict, the churches of Regular Canons are also subject to it, lest the interdict be rendered ineffectual; see Salm, on censures, chapter 6, page 4, note 9. And this interdict is also to be observed by clerics and religious, indeed even by the same Bishop who imposed it, except for the Pope; Salm, ibid., note 8; but see the statements in book 5, note 64, v. Infertur III.)

[*Latin ed. p. 424*]

331. • 2. To those to whom an interdict is imposed, the entire population is forbidden; however, those who are not part of the population are not forbidden, such as scholars, clerics, pilgrims, etc. • (Thus, Salm. ibid. n. 46, with Bonac. Con. Avila, Lezana, Corn. etc., generally. And conversely, if the clergy are forbidden, the laity are not forbidden, according to canon. It is to be noted here that from a general, personal interdict are excepted: 1. Bishops (who are also excepted from a general suspension). 2. Infants, and those who are insane and incapable of understanding: however, they are deprived of ecclesiastical burial. 3. The innocent, who immediately establish a domicile elsewhere. 4. Outsiders, even if they have resided among them for a long time. See Salm. loc. cit. n. 45.) • Nor, when the clergy are forbidden, are religious persons forbidden, who are included only in name among the clergy. • (This is to be understood in accordance with Salm. de cens. c. 6, p. 4, n. 47. Unless the religious persons hold a benefice or office in that population. Salm. ibid. at the end. It should also be noted that when the clergy are forbidden, clerics who do not enjoy the privilege of the forum, nor other clerics who do not hold a benefice or office there, are not forbidden, for they do not constitute one body with the clergy. Salm. ibid. n. 46.) 332. — • 3. If it is said that the citizens (e.g., the inhabitants of Colonienses) are forbidden, then they cannot participate in divine services anywhere (unless they cease to be citizens there, or unless they have given a reason for the interdict); on the other hand, if a city is subject to an interdict, it is permissible for citizens or inhabitants who have not given a reason for the interdict to go elsewhere and participate in divine services there. • QUESTION II. What are the effects of the interdict? 335 The effects of

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the interdict are: I. Prohibition of divine offices. 335 II. Prohibition of the sacraments, except for Baptism, etc. 335 III. Prohibition of burial. 335 IV. A mortal sin, which is committed by those who violate the interdict. Also, irregularities incurred by clerics, and excommunication for religious persons. 333. — • ANSWER. The following are prohibited: I. Divine offices. • (By "divine offices" are meant all those things which can only be done by clerics; not, however, the offices of the Blessed Virgin Mary, of the Dead, etc., if they are said privately and in a place not designated for them; generally, Pal. Suar. Bon. and Salm. de cens. c. 6, p. 5, n. 50.) Therefore, those who are forbidden cannot participate in the Sacraments because of another's fault. However, clerics and religious persons, when they themselves are not forbidden, can and should, as before, celebrate Mass and divine offices; but with the doors closed, without ringing the bells (unless for a sermon, a greeting of the angels, or the death of someone), in a subdued voice, and excluding those who are forbidden. • (Thus, from c. Alma Mater, de sent. exc. in 6.

[*Latin ed. p. 425*]

Clerics and monks (for nothing is permitted to laymen) of both orders come, those who enjoy the privilege of the forum and the canon. Also, eremitical houses and hospitals, established by the authority of the Bishop, come; but not private, secular oratories. Thus, Salm. *Comm. de cens.*, c. 6, p. 5, n. 56. It is said that, except for those under interdict, it is permissible (it is understood) if they have been notified from the Council. And this is understood both of those who have incurred the interdict and of those who are personally under interdict. Therefore, if those under interdict refuse to leave after a warning, and the canon of the Mass has been begun, the celebration must cease, otherwise the celebrant would incur irregularity. However, this applies if the celebration takes place in a place under interdict, because there it is not considered that permission to celebrate has been granted, unless to those under interdict, etc. Conversely, if the celebration takes place in a place not under interdict, as Holz. *de cens.*, n. 284, and Mazz. vol. 4, p. 388, with Suar. state, then the interdicted person must be expelled; but if he cannot be expelled, the celebrant is not obliged to cease, because this is nowhere prescribed, as is prescribed regarding avoiding excommunicated persons). However, it is permitted that, on the feasts of the Nativity of the Lord, Easter, Pentecost, the Assumption of the Blessed Virgin, and during the octave of Corpus Christi, the divine offices be sung solemnly, even with those under interdict present, provided that those who have incurred the interdict do not approach the altar, nor come to the offertory, or to Holy Communion. (Hence, on these days, those under interdict are obliged to attend Mass. Those who have the privilege of attending, can also abstain from attending the Holy Sacrifice, conforming to the common law. Thus, Salm., ibid., n. 64, with Corn. Dian. Cano, Con.

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Avil., etc. Regulars, however, can admit servants, procurators, advocates, workers, and tertiaries to the divine offices, if these are not manifestly under interdict, nor have incurred the interdict.) 334. — II. Prohibition of the administration of the sacraments, except for baptism, confirmation, and penance. (As is stated in c. Alma Mater, de sent. exc. in 6, and baptism can also be conferred solemnly; as Salm. *de cens.*, c. 6, p. 4, n. 34, with commentary; and by a minister generally under interdict, but not specially under interdict. Salm., ibid., n. 35. And the same is said of the sacrament of penance, ibid., n. 38.) To all, these are permitted, except those who have incurred the interdict, even with their help, counsel, or favor. (And except those who are personally and specially under interdict, unless they first offer due satisfaction if they can, or if they cannot, at least a sworn caution. Salm., ibid., n. 37, from d. c. Alma Mater. However, the Eucharist can be given to the dying, and carried with a light and bell. Whether, however, clerics to whom it is permitted to attend Mass, as mentioned above, can receive Holy Communion? There are two opinions on this matter; see Salm., loc. cit., n. 41. However, Salm., ibid., n. 44, holds that the sacraments of Holy Orders and Extreme Unction cannot be received by those under interdict, nor during the time of the interdict. But with regard to Extreme Unction—

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"Concerning contradictions, Cor. l. 7, n. 498. Both Suarez and the Dicastery of Religious hold that, during a period of interdict, communion and Extreme Unction may be administered. Salm. ibid. n. 48, with Laym. Pal. Navarr., etc. 'It is not improbable that, during an interdict, marriage may be contracted, as Sanch. Con. and Laym. teach; against this, Suarez argues that this sacrament, in its essence, is not administered by the Church, but by the contracting parties themselves.' (And Salm. ibid. n. 47, with Con. Laym. Pal. Avila, etc., considers this opinion more probable, based on c. Capellanus, de feriis, where it is stated that marriage can be contracted at any time). Note here, with Salm. l. c. p. 3, n. 30, that if an interdict has been imposed based on a judgment that appeared just, according to established evidence, it must be observed in the external forum, but not in the internal forum; therefore, if the scandal ceases, the Sacraments may be received. However, religious, when an interdict is imposed by the cathedral or parish church, are bound to observe it, even if it is null for any reason, according to Clem. 4, de sept. exc. See Salm. de cens. c. 6, p. 3, n. 30 and 31, at the end.) 335. — "III. Prohibition of ecclesiastical burial, even with respect to infants and the deceased. However, clerics, who are in a local interdict, if they are not specifically interdicted, nor have they violated the interdict, may be buried with silence. Laym. c. 2, n. 3." (Therefore, clerics in a general local interdict, or a personal interdict, may be buried in the Church, even with a Mass, but without pomp; however, they may be buried in a Church that is specifically interdicted, but without a Mass. Salm. ibid. p. 6, n. 75, with Cov. Pal., etc.

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Laymen, however, must be buried in a non-sacred place, even infants; and if they are buried there, they must be exhumed; but when the interdict ceases, all must be buried in a sacred place. Salm. ibid. n. 69, with commun.) 336. — "IV. Clerics who violate the interdict sin mortally;'" (So also Salm. ibid. p. 7, n. 80. However, minor matters are excused, namely, if clerics perform functions that can be done by laymen, Bon. Pal., etc., with Salm. ibid. n. 81. Also, if they allow the door to be opened briefly. But clerics performing sacred rites, if they are specifically interdicted, or in a place specifically interdicted, or in a place generally interdicted with the doors open, etc., as mentioned above, sin gravely and incur irregularity, see Salmant. ibid. n. 87. Those who admit laymen who are interdicted to divine services are themselves prohibited from entering the Church, that is, not for private prayer within it, but for performing sacred rites there, as Pal. Con. Laym., etc., say, with Salm. ibid. n. 91.) "as also religious of both rites, who are, in addition, actually excommunicated; laymen, however, sin gravely if they, against a personal interdict, receive the Sacraments; but if they only violate a local interdict, e.g., by attending divine services, it is more probable..."

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It is only a censura, that is, a penance, provided that those personally interdicted are not themselves subject to any prohibition. Layman, c. 3, from Sylv. Soto, and Avila, etc.

DOUBT III. Who can impose and who can remove an interdict?

357. Who can impose an interdict? And is a grave fault required to incur it?

358. Who can remove general interdicts not reserved to a particular authority?

359. Who can remove personal and particular interdicts?

Regarding cessation from the sacraments (cessatio a Divinis).

337. — "R. 4. Those who can excommunicate and suspend [from the sacraments] can also impose an interdict." (Today, Bishops, without the consent of the chapter [for formerly it was otherwise], can impose an interdict, either generally or specifically, according to a custom introduced. Salm. de cens. c. 6, p. 2, n. 19, with Panorm., Suar., Pal., Sayr., etc. Regular superiors, however, can impose an interdict on their subjects, but not on their churches. Salm. ibid. n. 20, with the same authorities.)

"Indeed, it seems necessary that a determined person be subject to a mortal sin in order to be interdicted." (Of that same person, as Salm. ibid. n. 21, at the end. For a personal and particular interdict cannot be imposed for the fault of another. However, an interdict for a short time, in order to achieve only one or another effect, can be incurred even for a venial sin. Salm. ibid. n. 22, at the end, with Pal., Conc., etc.)

"But in order for a local or general interdict to be imposed on a com-

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munity, a very grave sin, committed with contumacy by the head or the principal members, is required, even if the rest are innocent."

338. — "R. 2. Local interdicts and general personal interdicts, which are imposed by common law and are not reserved, can be removed by the Bishop, or another who has jurisdiction over the interdicted community, but not by privileged religious, because the place and the community are not subject to the court of penance." (General interdicts imposed by a human authority cannot be removed except by the one who imposed them, or by the Pope. See Salm. de cens. o. 6, p. 8, n. 100.)

339. — "R. 3. From a personal and particular interdict, if it is not reserved, anyone approved can absolve." Finally, the privilege of absolution from all censures does not mean the power to remove a local or personal interdict imposed on a community.

Regarding cessation from the sacraments (cessatio a Divinis).

340. — Cessation from the sacraments is: A prohibition made to a cleric, so that he abstain...

[*Latin ed. p. 428*]

Regarding divine offices, and ecclesiastical burial. Suarez and Fillon, however, against others, as cited by Salm, ibid., p. 9, n. 403, maintain that a Bishop can prohibit one effect, but not another. This cessation is distinguished from an interdict, and is not a censure; it is imposed as a sign of mourning, or to repair a very grave injury done to God; and it affects all those who are in the place where it is imposed, see Salm, ibid., n. 402. It is, however, doubted whether, during this imposed cessation, clerics enjoy the privilege granted to them during an interdict. Salm, in the aforementioned passage, n. 404, commonly denies this, along with Pal, Bon, Fillon, Sanch, etc., against some; because the cessation is a new burden beyond the interdict. However, the cessation can suspend [services] for several solemn days. See Salm, ibid., n. 405. The sacraments, however, granted during an interdict, as mentioned above, are also granted during a cessation. Pal, Bon, Suarez, etc., with Salm, ibid., n. 407. The cessation is imposed by those who are able to impose censures, after prior warnings. See other passages in Salm, in the aforementioned passage, n. 409. Finally, it should be noted in passing what is contained in the decree of the Sacred Congregation of Rites: "It is not permitted to anyone, etc. (except for royal persons) to bring corpses to churches that are forbidden to them, unless they immediately cease from divine services." If this is not observed, the rectors and other ministers of the churches incur excommunication by that very act, and the church must be considered as under an interdict. This decree is written in the Bullarium of Clement XI, part 3, Decretor. Congr. Card. And then it is noted there: "And after a report was made, His Holiness (that is, the aforementioned Clement) approved the decree, and ordered it to be promulgated, and to be delivered for execution, and

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to be affixed in all the churches of the city." On October 3, 1701. Thus, in Ferraris, Bibliotheca v. Ecclesia, n. 28 and 29. Furthermore, n. cit. 29, states that, according to several decrees of the Sacred Congregation of Rites, it is forbidden to present the Gospel to lay people during the solemnities of Mass, as well as to offer them the use of the throne, and to admit them to the presbytery.

CHAPTER V. ON IRREGULARITY. And although irregularity is not a censure, due to the similarity it has with it, it is commonly associated with it; therefore, I add this.

QUESTION I. What is irregularity, and to what extent?

§ 1: Definition of irregularity. Is irregularity a censure? Irregularity is divided in two ways.

[*Latin ed. p. 429*]

344.— R ESP. 4. A canonical impediment is that which hinders the reception of the sacred orders, and the exercise of those who have received them. Therefore, it follows that it is not a censure, but rather a kind of disability; for although it is sometimes imposed as a penalty, it is not properly a penalty. Laym. 1. 1. tr. 5. p. 5. c. 2. Bonac. d. 7. q. 4. p. 4. Quær. Whether irregularity is a censure? The first opinion affirms this, and this is held by Soto in 4. d. 22. q. 3. art. 4, and by Bann., Led., Gutt., Corn., Cord., etc., as cited by Salm. de cens. c. 4. p. 2. n. 41. The reason is that, as they say, the definition of a censure, namely, an ecclesiastical penalty, also applies to irregularity. The second opinion, however, is more common and more probable, and is held by Suar. de cens. d. 1. sect. 3, Bon. d. 1. q. 1. p. 1. n. 4, Pal. d. 1. p. 1. n. 3, and Salm. ibid. n. 42, with Con., Val., Avila, Henr., Cand., Machad., etc. This opinion teaches that irregularity is not a censure, but rather an impediment or disability, and this is clearly demonstrated from c. Quærenti, de verb. sign., where Innocent III, when asked what is meant by the term "censure" in papal bulls, replied: "That by it, not only prohibitions, but also suspensions and excommunications, are understood to be in force." Therefore, since the Pope has spoken dogmatically and indefinitely, mentioning the penalties that come under the name of "censure," besides those, there is no irregularity, nor any other to be admitted. Resp. 2. It is divided into two kinds: one arising from a fault, and the other from a defect. 2. There is the total, or properly so-called, which deprives one of the reception of all orders, and the exercise of those received, e.g., homicide, bigamy; and there is the partial, which deprives one only of a certain ministry of the order, or even of the advancement to a higher order; e.g., a priest lacking sight is unfit for Mass, but not for hearing confessions; and a deacon lacking sight in his left eye is unfit for the priesthood, but can minister in his own order. DUBIUM IP. What are the effects of irregularity? 343. The effects of irregularity are: I. To render one incapable of receiving orders. II. To impede the exercise of orders. III. To invalidate the collation

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of a benefice. Does this apply to a simple benefice? 343. Is the collation then automatically invalid? 342. — R ESP. The following are the effects: I. To render one incapable of receiving orders, even the first Tonsure. (As commonly taught by Suar. d. 40. s. 1. n. 41, Pal. d. 6. p. 5. n. 2, Bon. p. 4. n. 4, and Salm. de

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c. 7. p. 2, n. 22, concerning Avila and Diana Veteranorum.

II. Preventing the exercise of received orders. (From c. fin. de temp. ord. and c. 41. de accusat.).

Therefore, an irregular priest, even though validly ordained, absolves illicitly. Bon. l. c. n. 4, and p. 4.

III. Whether the collation of a benefice, to the functions of which the recipient is unfit, is irregular and invalid, according to the more common and safer opinion; although some may not improbably say that it is not rendered invalid by the very act, but by the merit of the act. Laym. l. c. c. 4, n. 2, and 3. Sylv. etc. Bonao. p. 4.

According to this probable opinion, the following is resolved:

4. He who has obtained a benefice while in irregularity may, upon obtaining a dispensation, lawfully retain it in foro conscientiae, without a new collation, even if mention of the benefice is not made in the petition for the dispensation. Furthermore, if he is later deprived of the benefice, he is not bound to restore the fruits.

2. He gravely sins who, while in irregularity, exercises an act pertaining to his order, or undertakes such an act, even though his orders are validly conferred. (So also Pal. d. 6, p. 5, n. 4, and Salm. l. c. n. 24, with Corn. And it is also gravely sinful for an irregular person to receive the tonsure, as is the Bishop who confers it upon him, as Suar. d. 40, s. 1, n. 44. Bon. d. 7, q. 4, p. 4, n. 4. Pal. n. 2, and Salm. ibid. n. 22, with Avila, Corn. and Giball.)

Furthermore, it should be noted that irregularity in no way deprives one of actions that do not require the exercise of holy orders, and which laymen can also perform, such as receiving the sacraments, singing the Divine Office, as well as conferring benefices, because these pertain to the exercise of jurisdiction, not of orders; also, assisting at a marriage, or granting permission to another to do so, dispensing in vows, absolving from censures, granting the faculty to hear confessions. Thus, Pal. n. 14. Bon. p. 4, n. 47. Laym. tr. 5, c. 4, num. 1. Renzi p. 664, q. 3, with Fill. and Suar. ao Salm. de cens. c. 7, p. 2, n. 19, with Con. and Cornejo.

Question: Is an irregular person deprived of benefices by the very fact of his irregularity?

Regarding benefices obtained before the irregularity, it is certain among all that an irregular person is not deprived of them; nor should he be deprived by a judge, if the irregularity arises from a defect of infirmity, as is

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stated in the chapter "Ex parte, de cleric. ægrot." But if it is due to a fault, he should be deprived by the judgment of the judge; and in the meantime, although he is not deprived by the very fact, as is clearly inferred from the chapter "Ex litteris, de excess. prælat.," he is nevertheless bound to petition for a dispensation; but if he does not petition for it, or cannot obtain it, he is bound to renounce the benefice immediately, unless he is laboring under necessity, because, since he cannot lawfully fulfill his office, he cannot lawfully retain the benefice; thus, commonly, Suar. d. 40, s. 2, n. 45, and 49, and d. 44, s. 2, n. 2. Pal. d. 6, p. 5, n. 9, 44, and 45. Bon. d. 7, q. 4, p. 4, n. 8, 9, and 10. Cont. Tourn. tr. de irreg. part. 4, cap. 3, and Salm. l. c. n. 25, and 28, and with Avila, Val. Sa, Sayr. Gibald. Pelliz. etc.

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However, if the beneficiary has already fulfilled the duties of his benefice through another person, he should not be deprived of the fruits, as stated in Suar. d. d. 40. s. 2. n. 20, Bon. n. 10, Pal. n. 13, Tourn. p. 15, Holzm. p. 441. n. 221, Croix l. 7. n. 439, and Salm. ibid. n. 29, along with Corn. Pelliz. and others, extensively. However, is it permissible to deprive an irregular person of the pensions they possess? It is generally considered more probable that they should not be deprived, as stated in Suar. d. 44. s. 4. n. 34, Bon. n. 41, Pal. n. 42, and Salm. ibid. n. 27. Furthermore, it is reported by Barb. in Trid. sess. 14. c. 8 that the Sacred Council declared that, in general, it is not permissible to deprive someone of pensions. However, (as the aforementioned authors teach), the judge may, if the crime is very grave, deprive him of pensions.

Regarding benefits obtained during a time of irregularity, it is debated whether the collation is null by its very nature. If the irregularity is partial, that is, if the irregular person is unable to be ordained as a priest due to some physical defect, it is generally held that the collation given to him is valid and licit; thus, Pal. d. 6. p. 5. n. 5, Cab. T. J. l. 5. c. 19. n. 2, Roncag. p. 443. q. 5. r. 1. v. Moreover, Pal. d. 9. p. 6. n. 5, along with Val. Bon. Garcia Sayr, also suggest that it is certain, as stated in Salm. de cens. c. 7. p. 2. n. 33, Holzm. p. 441. n. 320, and Suar. d. 40. sect. 2. n. 34, that if the benefice is simple and does not involve the obligation of an office or the exercise of the sacred order, but only recitation of the hours or something else that lay people can also perform, then such a benefice can indeed be accepted by an irregular person. However, should a person who is irregular be deprived of benefits that require the exercise of the sacred order? There are two opinions on this matter. The first, which is more common, affirms that such deprivation is necessary, and this view is held by Suar. d. 40. s. 2. n. 36 (calling it the common opinion), Bon. d. 7. q. 1. p. 4. n. 6, Less. l. 2. c. 34. n. 129, Cont. Tourn. loc. cit., Cabass. l. 5. c. 19. n. 2, as well as Covarr. Avil. Henr. Garcias, Sayr, Villal, and Corn. ap. Salmant. ibid. n. 30, who also state that it is the common opinion. This is supported by cap. 2. de cler. non

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ord. ministr., cap. 2. de cler. pugnant., etc., c. Dudum, deelect., etc., Cum bonæ, de ætate, and qualit., etc., and especially by Trid. sess. 14. de ref. cap. 7, where it is stated: "No one should be promoted to the sacred orders (if irregular) at any time, nor should any ecclesiastical benefits be conferred upon him." Furthermore, sess. 22. cap. 4 states: "No provision should be made for others unless those who are judged to possess the necessary age and other qualifications are recognized as such; otherwise, the provision is invalid." The reason is that a benefice is given for the sake of the office, and therefore, someone who is not fit for the office, and who cannot exercise the sacred order, is also not fit for the benefice. The second opinion, however, states that such a collation is not invalid by its very nature, but rather is only invalidatable by a judge; thus, Innoc. in c. Cum nostris, de concess. præb. Sylv. v. Eæcomm. num. 4, Laym. tr. 5. p. 5. 1. n. 3, Viva q. 8. art. 1. n. 5, Elbel p. 457. n. 458, Ronc. p. 443. q. 5. r. 1. v. In contrast, Pal. d. 6. p. 5. n. 7, Diana p. 4. tr. 2. r. 37, and Salm. dict. n. 34, along with Felin. Ancharan. Giball. etc., hold this view, and Suar. n. also considers it probable.

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35. Less. l. c. and Concil. Bon. Hurt. etc. apud Dian. l. c. Ratio, quia non sunt imponendæ pænæ, nisi in juræ sint expressæ; nullibi autem habetur expressum, quod irregularitas reddat hominem incapacem beneficii; unde irregularis, quamvis graviter peccet (ut advertit Suar.), acceptando et retinendo beneficium sine dispensatione, sicut etiam peccat qui illud ei confert, tamen si suppleat per alium munia beneficii, non tenetur fructus restituere. Canones verò qui opponuntur, teste ipso Suar. (qui oppositam sententiam probabiliorem putat), nihil aliud probant, nisi quod talis collatio sit illicita, non tamen invalida. Nec obstat textus Tridentini, ubi dicitur irrita provisio beneficii, quæ sit in personam inhabilem; nam respondetur irregularem non dici inhabilem, ut incapacem beneficii, sed ut illo indignum, nempe inhabilem ad licitam beneficii perceptionem. Prima sententia videtur probabilior, licet enim jura non expressè declarent hanc collationem invalidam, tamen communior sententia DD. sic illa interpretatur; nam sensus DD. ut fatetur ipse Laym. est optimus legum interpres. Sed hoc non obstante, Secunda sententia videtur satis probabilis. Hic tamen advertendum, quod adhuc stante probabilitate hujus sententiæ, nequeat irregularis se immittere in possessionem beneficii, quia (ut diximus l. 4. n. 761. v. Q. II.) nemo cum opinione probabili potest inchoare possessionem rei alienæ.

DUBIUM III. Quomodo incurratur, et tollatur irregularitas?

344. An in dubio irregularitas incurratur?

345. Non incurritur, nisi in jure sit expressa.

346. Dub. 1. In dubio de irregularitate contracta quomodo quis se gerere debeat? Et quid si dubium sit juris?

347. Dub. 2. Quid in dubio facti, præter homicidium? Dub. 3. Quid in

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dubio homicidii commissi? Dub. 4. Quid in dubio de animatione fæltis, si abortus fuerit patratus?

348. An ad incurrendam irregularitatem ex delicto requiratur culpa mortalis, et actus externus, ac consummatus?

349. Qu. 1. Quid si crimen fuerit externum, sed prorsus occultum?

350. Qu. II. An ad incurrendam irregularitatem requiratur scientia legis?

351. Qu. III. An etiam scientia pænæ?

352. Quot modis tollatur irregularitas?

353. Irregularitas tollitur per dispensationem. Quis possit in ea dispensare? Plura notanda.

354. Quomodo tollatur irregularitas ex defectu natalium per professionem religionis?

355. Prælati regulares in quibus irregularitatibus possint dispensare?

344. — R ESP. 4. cum ab homine non feratur, nulla incurritur, nisi in jure expressa habeatur. (c. Is qui, de sentent. excomm. in 6.)

Translation:

35. Less. l. c. and the Council of Trent (Tridentini), etc., as cited by Dian. l. c. The reason is that penalties are not imposed unless they are expressly stated in the law; furthermore, there is nothing expressly stated that makes a person irregular incapable of receiving a benefice. Therefore, an irregular person, although he may sin grievously (as noted by Suarez), by accepting and retaining a benefice without a dispensation, as does the one who confers it upon him, is nevertheless not obligated to restore the fruits if he fulfills the duties of the benefice through another. However, the canons that are opposed, according to Suarez himself (who considers the opposing opinion to be more probable), prove nothing other than that such a conferral is illicit, but not invalid. Nor does the text of Trent (Tridentini) object, where it is said that a provision for a benefice is invalid if it is made for a person who is ineligible; for it is responded that an irregular person is not to be called ineligible in the sense of being incapable of receiving a benefice, but rather as being unworthy of it, that is, ineligible for the lawful reception of the benefice. The first opinion seems more probable, because although the laws do not expressly declare this conferral to be invalid, the common opinion of Doctors interprets it in this way; for the opinion of Doctors, as Suarez himself admits, is the best interpreter of the laws. But even so, the second opinion seems sufficiently probable. However, it must be noted that, even with the probability of this opinion, an irregular person cannot enter into possession of the benefice, because (as we said in l. 4, n. 761, v. Q. II.) no one with a probable opinion can begin to possess another's property.

DUBIUM III. How is irregularity incurred, and how is it removed?

344. Is irregularity incurred in a doubt?

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345. No, it is not incurred unless it is expressly stated in the law.

346. Dub. 1. How should one act in a doubt concerning an irregularity? And what if the law itself is doubtful?

347. Dub. 2. What if there is a doubt about a fact, other than homicide? Dub. 3. What if there is a doubt about the commission of homicide? Dub. 4. What if there is a doubt about the animation of the fetus, if the abortion has been procured?

348. Is mortal sin, and an external and completed act, required to incur an irregularity resulting from a crime?

349. Qu. 1. What if the crime is external, but completely hidden?

350. Qu. II. Is knowledge of the law required to incur an irregularity?

351. Qu. III. Is knowledge of the penalty also required?

352. In how many ways can an irregularity be removed?

353. An irregularity is removed by dispensation. Who can dispense in such cases? More things must be noted.

354. How is an irregularity resulting from a lack of legitimate offspring removed through a profession in religion?

355. Which regular prelates can dispense in certain irregularities?

344. — R ESP. 4. since it is not brought forth by a man, no irregularity is incurred unless it is expressly stated in the law. (c. Is qui, de sentent. excomm. in 6.)

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Where there is doubt, either of fact or of law, you may maintain that you are not irregular; for the condition of the possessor is the better. Bonaventure, q. 1, p. 5, except Suarez, Fulgentius, etc. However, make an exception if you doubt that you have committed homicide, at least unjust homicide, as is clear from c. Significasti, and from c. Ad audientiam 2, de hom. See Bonaventure, l. c. 345. There are many other noteworthy points to examine here. It is certain that no irregularity is incurred unless it is expressly stated in the law, as stated in d. c. Is who, from the sent. excom. in 6, where it is said: "Unless it is expressly stated in the law, etc." In this, Suarez wisely says in d. 40, s. 5, n. 5, that the Pope did not establish anything new there, but declared the principle that in doubt, judgment should be given that the penalty is not to be imposed, or not extended beyond the cases expressly stated. Only the decrees of the Pope, or of councils approved by the Pope, are subject to this law, and not others, nor is custom subject to it; thus Suarez, d. 40, sect. 4, n. 13. See Cont. Tourn. tr. da Irreg. part. 1, cap. 2, v. Hinc. Dianap. 8, tr. 7, r. 28, and Salm. de cens. c. 7, p. 1, n. 8, with Pelliz. Gib. and Machado. From this, it follows that the argument from the similar, nor from the greater to the less, is not valid for incurring an irregularity, as commonly taught by Pal. d. 6, p. 2, n. 1, Laym. t. 1, tr. 5, p. 5, c. 1, n. 6, and Salm. de cens. c. 7, p. 1, n. 3, with Corn. and Giball. However, Laym. l.

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c. observes that if there is doubt about whether an irregularity is expressly stated in the law, it is to be admitted, provided that the Doctors and custom have always and commonly affirmed it, because these are the best interpreters of the law. 346. — But doubt 4. Whether, in doubt, whether one has incurred an irregularity, one should act as if irregular? Understand this of prudent doubt, for doubt arising from scruples, or from slight reasons, is to be dismissed. Understand also this of negative or suspensive doubt, for if the doubt is positive, each person must act as if irregular, before diligent inquiry into the truth, as taught by Sanch. Dec. l. 1, c. 40, n. 37, Suarez, d. 40, sect. 5, n. 42, Pal. d. 3, p. 3, n. 3, and Salm. ibid. p. 3, n. 42, with Con. ex c. Illud, de cler. exc. Unless a grave necessity arises, namely, if the opportunity arises to receive orders, or a benefice, as Salm. ibid. with the same. After sufficient diligence, one may rightly consider oneself not irregular, acquiescing in the probable opinion, as Suarez, n. 6, Pal. n. 4, Salm. dict. n. 42, in fine with Hurt, Corn, Giball. Therefore, the difficulty arises when one doubts; a negative doubt. Resp. If the doubt is of the law, namely, if one doubts whether an irregularity has been assigned by the law, or not, for some act, then no one is bound to act as if irregular in the forum of conscience, nor in the external forum to be condemned as such, both because in doubt, no one is to be deprived of his rights; and because, when there is doubt about the law, the law does not obligate, at least because then it is not sufficiently promulgated; thus, commonly, the Doctors, Sanch. Dec. l. 1, c. 40, n. 42, Pal. d. 3, p. 3, n. 7, Suarez, l. c. n. 4, Bon. de irreg. q. 1.

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p. 5, n. 2. Roncatius, p. 443, q. 1, r. 2. Council of Trent, t. 40, p. 486, n. 9. Diana, p. 4, tr. 2, r. 52. Salmeron, ibid., n. 44, with the Councils of Avila, Cartagena, and Valencia. Moya, tr. 5, q. 6, n. 6, with Lugo, Navarre, and Contzen. Tourniel, *De Irregularitatibus Matrimonii*, part 1, cap. 4, concl. 2. Gravis, with Covarrubias and Habert, *Quid si Dubium sit Facti?*, 347. — Doubt 2. Whether irregularity is incurred in a doubt concerning the fact, namely, whether it is doubted that someone has committed a crime (other than homicide, as we will discuss in the following doubt)? The first opinion affirms this, and this is held by the Council of Trent, t. 40, p. 486, n. 8, and Contzen, *loc. cit.*, with Sayr and Habert, *De Audientia*, on homicide, where it is said: "When in doubtful cases, the safer path must be chosen, it is fitting to order the aforementioned priest not to celebrate the sacred rites." Therefore, in every matter, the safer course must be followed. The second opinion, however, which is the more common and truer, denies this, and this is held by Cabassol, *Tractatus Juris Canonici*, c. 20, n. 14; Suarrez, *Disp. 40*, s. 6, n. 8 and 43; Bonaventure, n. 3; Diana, p. 4, tr. 2, r. 25; Roncatius, *loc. cit.*; Palafox, *Disp. 6*, p. 2, n. 9; and Salmeron, *De Censuris*, c. 7, p. 3, n. 46, with the Councils of Avila, Cartagena, and Valencia. Reason 1: Because hatreds must be restrained, and no one should

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be condemned in doubt, according to *Regulae Favorabiliores*, 425, ff., on canon law, and according to c. "Cum sunt," ibid., tit. 6, where it is said: "When the laws of the parties are obscure, the accused should be favored, rather than the accuser." And the same is said in c. "Ut Ecclesiae Beneficia," etc. However, there is no reason to depart from this rule, which is so consonant with reason, without an explicitly stated text, which is only found in the doubt of homicide, and not in the doubt of other crimes. Reason 2: Because (as we said above, n. 346), irregularity is not incurred unless it is stated in the law; but in the law, only the homicide is said to be considered irregular in the doubt of homicide, and not another offender. Reason 3: And this is the strongest reason: because if one doubts whether what applies in the matter of homicide also applies in other matters, then the doubt also extends to the law itself; but in a doubt of the law, even opponents (as we have seen) concede that irregularity is not incurred. Nor do the cited texts object, because it is answered, with Navarre and Suarez, that the reason given there (namely, that the safer path must be chosen in doubtful cases) is not assigned as a precept to be observed necessarily and universally, but as a reasonable motive for decency, which is most fitting for the dignity of the sacrifice, so that the priest should abstain from celebrating in the doubt of homicide, lest, if it should later be certainly known that he was a homicide, he would be found to have celebrated to the scandal of the people; and this is explicitly declared in c. "Petitio Tua," ibid., on homicide: "When it is more prudent to abstain in this kind of doubt (i.e., homicide), than to celebrate rashly." Note that "it is more prudent" means that it is not a precept. But who denies that it is sometimes fitting that some action, which is not in itself illicit, should be prohibited by positive law for a reasonable motive? But since that motive of indecency applies only to homicide, it does not encompass other cases. Answer.

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2. Although reason might encompass other cases, in matters of irregularity arising from a crime, one case should not be considered analogous to another, even if the same, or even a greater, reason applies, unless both cases are expressly stated in law. This principle is even more strongly applicable to irregularities concerning which, as we have seen (n. preceding), canon law prescribes no penalties, except for those that are expressly stated.

3. Is one to be considered irregular who doubts whether he has committed homicide? There are differing opinions. Some say that such a person is irregular only in the external forum, but not in the forum of conscience; thus, Innocent Salas and Henry, in Sanch., book 4, chapter 10, number 38. Others, on the contrary, say that such a person is irregular in the forum of conscience, but not in the external forum; thus, Hostiens, Armil, Tabien, etc., in Sanch., number 39. However, it is more correct to hold that such a person is to be considered irregular in both forums, as stated by Pal.,

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number 8; Bon., number 3; Ronc., page 114, volume 1, see Limits; Sanch., number 42, with Nav., Palud., and Led., and Salm., on censures, chapter 7, page 3, number 45, with Cornejo, Avila, and Sayro; and this is proven from the canons *Significasti*, *Ad audientiam*, and the penultimate canon on homicide, where the reason given, namely that in doubt, the safer course is to be chosen, applies to both forums.

4. However, it should be noted that this applies to the case in which someone is certain of homicide (as is assumed in the aforementioned texts), and only doubts whether he himself was the cause of it; otherwise, if he doubts whether the homicide occurred at all, or whether it followed from his actions, as is very reasonably stated by Pichler, book 5, title 12, number 8; Elbel, volume 2, page 467, number 490; Dian., page 7, treatise 5, response 24; Tamb., on irregularities, chapter 5, section 1; and Spor., treatise 5, page 434. Thus, Dian., page 7, treatise 5, response 26, with Nav., Menoch., and Quaranta, states that if a physician opened the vein of a pregnant woman in order to cause an abortion, but it is later not certain that an abortion occurred, he is not to be considered irregular, neither in the internal nor in the external forum, because (as is stated in book 4, section, "Item illud," ff. ad Syllan.) one is not subject to penalties unless the crime is proven. On the contrary, it should be said that if the means used to cause an abortion were so effective that they commonly result in that effect, then a presumption is made from commonly occurring events, as stated by Nav. and Mascard., in Dian., in the same place, from the last section of the book on instruments.

5. It should be noted that in the aforementioned texts, it is stated that one who doubts whether he has committed homicide is to be considered irregular only with regard to two effects, namely abstaining from celebration and seeking a dispensation, as the laws state. From this, it is inferred that this sanction is valid only for clerics, but not for laity, since homicide is more detrimental to the status of clerics than to that of the laity; thus, Salm., on censures, chapter 7, page 3, number 45, and Ronc., book 2, question 1, in the end. It is also inferred that this is valid only with regard to the aforementioned two effects, but not with regard to others, namely the deprivation of benefices, etc., as stated by Sanch., book 4, chapter 10, number 43; Suar., book 40, section 6, number 6; Ronc. and Salmant., books and chapters; and Pal., book 6, page 3, number 8, with Panorm., Mol., Con., Sayr., Hurt., and Salas.

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3. It is argued that one who doubts whether a mutilation is irregular should not be considered irregular, just as one who doubts whether a homicide is irregular; because it is only in the case of homicide that such a determination is made, as stated by Sanchez, n. 49; Bon., p. 5, n. 4; Ronc., p. 114, v.; Duo, Salm., dict., n. 45, in fine; and Suar., d. 40, s. 5, n. 14, against Nav. and Henr., Dubit. 4. Should one who has committed an abortion be

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considered irregular, if he doubts whether the fetus was animate or not? See the statements in book 4, n. 396, where we denied this, based on a more reasonable opinion with many Doctors, to which I add Delbene, cap. 2, d. 4, s. 20, n. 22, and the learned author of the treatise (Inst. per li nov. confes., p. 2, cap. 48, n. 464 and 465), who testifies that in practice, a female child is not considered animate until the eightieth day, while a male child is considered animate from the fortieth day, as stated by St. Thomas, with Albert M. and others. This is confirmed by the statements in the preceding note (1), n. 348. — "Response 2. To incur irregularity through a fault, it is required that there be a completed external act, and a mortal sin, as stated against Cajetan. The reason is that the penalty is severe, and it is difficult to remit." Therefore, to incur this irregularity, it is required that there be a mortal sin; from which it follows that if someone is excused from a mortal sin due to some circumstance, he will also be excused from the irregularity, as taught by Sanchez, de matr., l. 9, d. 32, n. 9; Suar., d. 40, s. 3, n. 17; Cont. Tourn., de irreg., part. 1, cap. 2, r. 2; Conc., t. 10, p. 486, n. 8; Escob., lib. 51, n. 6; and Salm., de cens., c. 7, p. 1, n. 12, with Conc. Diana, and others, widely, from c. 5, de pænis, in 6, where it is said that a very severe penalty should not be imposed for a minor offense. Furthermore, it is inferred that a precept obliging under a penalty of irregularity also obliges under a mortal sin; Suar., Pal. Con., and Salm., ibid. Requirement II. External act. But when, in some bull or canon, dispensation is granted in mental irregularity, it is truly understood when the irregularity is hidden. Pal., Con., Cov., Avil., etc., comm., with Salm., ibid., n. 43. Requirement III. Completed external act, as stated by Cont. Tourn., l.c., and Salm., ibid., with Sot., Pell., Gibal. See the statements in the section on censure, c. 1, n. 36. 349. — But the question is: Does one incur irregularity for an external crime, which is completed, but completely hidden, so that only the perpetrator is aware of it? There are three opinions: The first opinion universally denies this, and it is held by Rodriguez, Mendo, Castro, Bruno, etc., as stated in Diana, p. 12, Miscell., in fine libri, n. 6, p. 97, v. Second opinion; because (as they say) irregularity is not given unless it is expressed in law; but nowhere in the law is there mention of irregularity for a crime that is completely hidden. The second opinion, which is held by Ledes., Cordub., Henrig., etc., as stated in Salm., ibid., n. 46, excepts only homicide, because only in the case of... (1) See the note to l. 4, n. 304, Edit.

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The irregularity resulting from homicide is not solely due to the scandal caused to others, but also to the inherent impropriety of a priest, acting in the place of Christ, offering the Lamb of God after having committed murder; furthermore, with regard to homicide, it is stated in Session 14, Canon 7 of the Council of Trent: "He who shall have killed another through malice shall be removed from the altar, etc." Therefore, anyone who kills

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through malice, even if secretly, becomes irregular. A third opinion, held by Pal. d. 6. p. 2. n. 1, Dian. l. c. and p. 7. tr. 14. r. 48, and Salm. de cens. c. 7. p. 4. n. 16, along with Cov., Avila, Con., and Pelliz, universally affirms, not only in the case of homicide, for the reasons mentioned above, but also in the case of other crimes. The reason is that the Church, in reserving certain crimes, reserves even the most hidden ones, provided they are subject to her jurisdiction; indeed, if they are external, they are subject, even if unknown to anyone else, as is demonstrated by the imposition of excommunication for heresy entirely hidden (as mentioned in n. 365). Furthermore, it is clear from Canon 6, which states, "It is permissible," Session 24 of the Council of Trent, where the Council grants bishops the power to absolve from irregularities and censures, even those that are hidden, that it uses the single term "hidden" to refer to heresy, homicide, and other crimes; therefore, just as excommunication is incurred for heresy entirely hidden, and irregularity for homicide entirely hidden, so too is irregularity incurred for other hidden crimes. However, can an irregularity arising from a completely hidden homicide be dispensed with by the bishop? See below, n. 392, where we will deny this.

350. — Question II. Is knowledge of the Church law prohibiting a certain act required to incur an irregularity resulting from that act? The first opinion universally denies this, stating that it is sufficient to have knowledge of the sin committed; thus, Suar. d. 40. s. 5. n. 10, Holzm. t. 4. p. 409. n. 341, and Azor. and Felin. apud Sanch. l. 9. d. 32. n. 16. The reason is that human law intends to punish not only the transgression of its own precepts, but also of divine law; furthermore, he who wills the antecedent, wills also the consequent; therefore, he who wills sin, wills also the punishment of sin. The second opinion, however, is more common and more probable, and is held by S. Anton. 3. p. tit. 24. c. 33. sub fin., Bon. de censuris d. 4. quæst. 2. p. 4. v. 13, Pal. de peccat. tr. 2. d. 4. p. 47. n. 6, Nav. c. 23. n. 47, and c. 27. n. 19, along with Caj., Sylv., and Ang. Sanch. l. c. n. 9 and 17, along with Innoc., Abb., Host., Manuel, Vivald., etc., Salm. de cens. c. 7. p. 3. n. 49, along with Cornejo, and Leand. and Boss. de usu matr. c. 5. n. 158, along with Panorm., Henr., Tab. Vill., and Reg. And it is proven in four ways: first, from the chapter "Proposuisti," Dist. 82, where Innocent I declared that certain incontinent individuals were not to be subject to the strict laws of the Holy See, because they were unaware of them; and yet, their incontinence was contrary to natural law. Second, by reason, because...

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He imposes a penalty for a crime forbidden by divine law, thereby establishing a new law; but he who sins against divine law, while invincibly ignorant of the ecclesiastical law, certainly sins against the divine law, and not against the ecclesiastical law; therefore, he ought to incur the penalty of the divine law, but not of the human law, according to the words of l. 6,

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n. 4072. The same opinion is held by Pal. de cens. d. 6. p. 6. n. 3, Viva q. 8. a. 2. n. 7, and Salm. l. c. n. 51, in fine, with Cornejo, Leand., and Machad., concerning one who commits homicide, being ignorant of the ecclesiastical law that forbids it, or in a dispute without considering the law: they say that such a person is excused from irregularity, since he does not incur it either through a crime or through a defect; not through a crime, because he does not sin against the ecclesiastical law which he is ignorant of, or to which he does not pay attention, according to the opinion previously demonstrated; nor through a defect, because those who incur irregularity do so only through a defect, namely, those who participate in the killing as necessary ministers for the investigation of the cause or the execution of the penalty, as Pal. probably says elsewhere, p. 14. §. 3. n. 7, Diana p. 3. tract. 5. r. 80, and Salm. tr. cit. c. 9. p. 4. n. 8, in the middle, with Vasq., Hurt., Pelliz., and Turrian. However, they teach that Suar. t. 3. d. 31. sect. 6. v. Solet, Boss. l. c. n. 174, and Diana p. 4. tr. 2. r. 85, with Merolla, and Mercero, do incur it; for irregularity is imposed in homicide because it is contrary to lenity, which is highly unbecoming of a minister of the altar; therefore, such a homicide does not properly incur irregularity either through a crime or through a defect, but through the indecency for which he is to be removed from the altar, according to what is said in Trid. sess. 14. c. 7: "Even he who kills his neighbor through industry and through ambush ought to be removed from the altar." This second opinion seems very probable and should be held; but I do not dare to reject the first, since such an irregularity is not entirely expressed in the case in question in jare 354.

Question III: Is knowledge of the penalty, that is, the irregularity, also required to incur an irregularity through a crime? The first opinion denies this, and it is held by Suar. d. 40. sect. 5. n. 9, Laym. l. 4. tr. 4. c. 20. n. 6, Croix l. 7. n. 482, Cont. Tourn. de irreg. part. 4. cap. 4. concl. 4, Anacl. de cens. d. 3. q. 4. n. 5, Elbel de irreg. n. 464, Holz. p. 409. n. 314, with Carden. and Pichler, as well as Sotus, Pontius, Mol., Vasq., Azor, Salas, Reg., Fill., etc., apud Boss. de usu matr. c. 5. n. 468. The reason is that irregularity is not a medicinal penalty to avoid crimes in the future, but is an inability, or a purely punitive penalty, because of the stain of guilt, for which the Church renders the offender incapable of the ministry of the altar; therefore, it is sufficient that such a penalty be imposed by law for an act forbidden, which the guilty party has already knowingly and culpably committed, even if he is ignorant of the penalty. Furthermore, he who desires the cause, that is, the sin, must also undergo the effect, namely, the penalty, even if it is unknown to him. This opinion is indeed very probable.

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The second proposition, which affirms that it is also sufficiently probable, appears to be true, and is held by Navar. Man. c. 23, n. 47; Sylv. v. Ignorantia q. 8, d. 1; Sanch. de matr. l. 9, d. 32, n. 21; Pal. tr. 2, de pecc. d. 1, p. 47, n. 7,

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and tr. 29, de cens. d. 6, p. 6, n. 3; Ronc. p. 114, q. 2; Tamb. de cens. l. 10, tr. 4, c. 4, §. 5, n. 3; Diana p. 4, tr. 2, r. 85; Boss. l. c. n. 174, with Con. Sayr. Duard. Felin, etc.; also Corn. Rodr. Portell. and Leand. ap. Salm. de cens. c. 7, p. 3, n. 53, who call it equally probable as the first; and Suar. l. c. and Renzi p. 366, q. 7, also consider it probable. The reason is that irregularity arising from a fault is considered a true penalty imposed in vindication of the crime. Although it is not required that one know of the penalty in order to incur it when the penalty is ordinary, and such that it can in some way be foreseen from the nature of the crime itself, since natural reason dictates that a fault must be punished according to its nature, it is required that one know of the penalty when it is extraordinary and excessive, so that it cannot even be foreseen in a general way according to the nature of the matter; and this is the case with the penalty for irregularity. It does not contradict this to say that one who sins willingly must bear the penalty. For it is answered, with Navar. c. 27, n. 174, that although it is not required to consent to the penalty in order to incur it, it is required to consent to the cause of the penalty; and that to consent to the cause of the penalty, as D. Th. 2. 2, q. 65, art. 8, teaches, it is not sufficient to consent to the sinful act, which is already the cause of the penalty, but the sinner must know that such an act is the cause of the penalty.

Four ways remove irregularity: I. By the cessation of the cause, if the irregularity arises from a defect (e.g.) of age, ignorance, poverty, etc. Suar. d. 41, sect. 1, n. 6; Laymann tract. 6, p. 5, c. 4, n. 10; Cont. Tourn. de irreg. part. 3, cap. ult.; Ronc. p. 114, q. 3, r. 1; and Salm. de cens. c. 7, p. 4, n. 55, with Sayr, etc. It should be noted that when one is irregular because of infamy, if the infamy is popular, it is removed by amendment, from cap. 3 and c. 48, dist. 56. If it is infamy of fact, it is removed by a change of location, Cont. Tourn. de Irreg. part. 2, cap. 6, in fine, and Ronc. p. 114, q. 3. If, however, the infamy is of law, i.e., by a sentence of a judge, then a dispensation is absolutely required to remove it. II. By baptism, if the irregularity arises from a fault; for he who committed homicide before baptism is not irregular after baptism. Salm. ibid. n. 57, with Con. Sayr, etc. III. By dispensation, of which see below, n. seq. IV. By religious profession, of which see below, n. 354 and 353.

353. "Resp. 3. Irregularity is not removed by absolution, but by dispensation, with this, or a similar formula: I dispense you from the irregularity, which you have incurred, or have incurred, because of this or that cause. And if the one dispensing intends to remove all, and can do so, he removes all; but if not, he removes only that which he can, and intends to remove. Although, however..."

[*Latin ed. p. 440*]

This dispensation pertains to the Pontiff; however, according to the new law of the Council of Trent, the Bishop can grant a dispensation in cases of

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irregularities arising from a hidden fault, provided that the matter has not been brought before a contentious court; unless, of course, it involves direct and intentional homicide. *Bonifacius, quaestiones disputatae, 8, pars 4, n. 3, citing from the Council of Trent, session 24, chapter 6; Suarez, Sanchez, Lessius, Layman, chapter 9, n. 4.*

It should be noted:

I. That if a dispensation were granted by the Pope for some irregularity without just cause, the dispensation would be valid (although not licit); but if it were granted by an inferior, it would be entirely null. *Salm, de censuris, chapter 7, part 4, n. 60.*

II. If someone has contracted several irregularities of the same kind, for example, if he has repeatedly committed sins while under censure, it is sufficient to obtain a dispensation if he states that he has committed those sins multiple times; thus, *Suarez, part 44, section 3, n. 28; Palatinus, part 6, page 7, number 3; and Salm, ibid., n. 81, with Consentius, and Sanchez, de matrimoniis, book 8, part 24, n. 7, and Navarrius, Henricus, and Avila, apud Salm, in the same place, teach that it is sufficient if he states that he is irregular only because of such a fault.*

III. A prelate, if he admits someone to the order or to a benefice, whom he knows to be irregular, is considered to be dispensing with him in that regard. *Bonifacius, distinctio 7, quaestio 5, part 4, at the end; and Salm, ibid., at the end, with Henricus and Avila, 354.*

Furthermore, an irregularity arising from a defect of birth can also be removed by a profession in religion that is approved, but only with regard to orders; not with regard to prelacies. *Bonifacius, page 2; Layman, chapter 9, n. 6; Suarez, Sanchez, Lessius.* (Thus, also, the commentary of Sanchez, de matrimoniis, book 7, part 86, n. 4; Suarez, part 41, section 4, n. 3; Holzappel, page 411, n. 323; and *Per professionem*, and Contenson, Tournhem, de irregularitatibus, part 2, chapter 4; *Quod dixit*, from the concession of Gregory XIV, Clement VIII, and Paul V.) contrary to Villalobos, who, apud Diana, page 4, treatise 2, reason 65, says that it is removed with regard to all things usually governed by those brothers, such as priories, preposures, rectorates, and other offices, regarding which prelates can at least dispense with them, at least in a general or provincial chapter, as Diana notes, citing Barbatus. (And thus, also, Palatinus, part 6, page 7, n. 2, and Holzappel, in the same place, with Sayr.) Bonifacius, distinctio 7, quaestio 2, part 3, n. 44, and Contenson, Tournhem, in the same place, with Sayr, note that a dispensation for dignities does not refer to the episcopate. What Sotos says, namely, that all irregularities are removed by a religious profession, is commonly denied by the authorities, apud Salm, de censuris, chapter 7, part 4, n. 58.)

Therefore, we resolve:

1. Only the Pope, and those who have received a privilege from him, can

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dispense in irregularities arising from a defect.

2. A confessor cannot dispense in any irregularities, unless he has a special privilege from the Pope.

3. Regular prelates, as Salm says, in the same place, treatise, chapter 8, page...

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6. n. 72. With Bauny, Cand. and others, and *Spor. Suppl.* p. 149, n. 167, with Herin, from the privilege of Saint Peter V. (in bulla 23), as recounted at length by Salm, ibid., c. 2, p. 6, n. 72, and from another document of Gregory XIII, cited ibid., c. 8, p. 6, n. 74, they can grant dispensations to their subjects in every hidden irregularity, in which the Bishops can do so with their own subjects. And even if the irregularity arises from bigamy, and even voluntary homicide, provided it is not notorious, as Pal. d. 6, p. 7, n. 2, states, citing the privilege of Martin V, as recounted by Rodrig. and Spor., in the aforementioned passage, with Portel. However, Portel states with the same Rodrig. that this is to be understood only with regard to dispensations for orders, not for prelacies. How can the regulars grant dispensations in cases of irregularity arising from voluntary homicide? See the following remarks, n. 396. With regard to their subjects, Spor. Suppl. p. 150, n. 170, with Suar., Sanch., Bassæo, Sayr., etc., and Salm., *tract.* 18, de privil., c. 4, p. 2, §. 12, n. 170, and de cens., c. 7, p. 4, n. 63, with Pell., Lez., Rodr., Henr., etc., teach that regular confessors can grant dispensations in all irregularities in which the Bishops can grant dispensations to their own subjects, by virtue of the privilege of Sixtus IV, in bulla 9, *Minimis concesso*, and confirmed by Julius II, in his constitution which begins, *Dum ad sacrum ordinem* (as testified by Peyrin, and the constitution of Leo II, §. 22, apud Salm., *tract.* 18, de privil., c. 4, p. 2, §. 12, n. 474). There, to the confessors of those orders, the faculty has been granted to absolve from all excommunications, suspensions, and interdicts, and to grant dispensations, and to change any vows, as a diocesan priest can, in whatever ordinary irregularities, whether by law or by human decree. Bauny testifies that this privilege is already in use, but Lezana doubts it; however, Salm., de privil., c. 4, p. 2, §. 12, n. 474, states that, since the use of such a privilege is hidden with regard to the forum of penance, no one can testify whether it is in use or not; moreover, they add that privileges are most gracious and are not lost through non-use, as they have demonstrated in the same *tract.*, c. 2, p. 2, §. 2, n. 43. And even if the regulars could not use it because of non-use, they state that other regulars who share in these privileges are not forbidden from using them. Whether a confessor elected by the chapter can grant dispensations in cases of irregularity arising from a fault, see Salmant., de cens., c. 7, p. 4, num. 66.

DUBIUM IV. What are irregularities arising from a fault?

356 An irregularity arising from a fault occurs I. due to a repeated bap-

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tism.

357 II. Due to a violation of a censure.

358 More things to note. (But if someone is placed under a censure, does he incur an irregularity?)

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336 III. On account of the exercise of acts pertaining to Holy Orders, which a cleric does not possess.

360 IV. On account of a defective reception of Holy Orders.

361 In how many ways can irregularity arise from a clandestine reception of Holy Orders?

362 V. On account of infamy and notoriety resulting from a crime.

363 It is required that the fact, or the crime itself, be notorious. What are the crimes and actions to which infamy is attached?

364 How is this irregularity removed?

365 VI. On account of homicide or mutilation.

366 Concerning irregularity resulting from voluntary homicide.

367 Those who incur this irregularity are: I. Those who commit homicide or mutilation.

368 Doubt 1. What if the homicide repents before death?

369 Doubt 2. What if one commits the act, but others carry it out?

370 II. Those who order or advise homicide or mutilation incur this irregularity.

371 Doubt 1. What if there is doubt as to whether the homicide was caused by malice or counsel?

372 Doubt 2. What if the homicide was determined to kill?

373 Doubt 3. What if the one advising revokes the advice?

374 III. All those who cooperate in homicide or mutilation incur this irregularity, namely: 1. Those who excel (in wickedness). 2. Those who incite in an unjust war. 3. Those who provide assistance. 4. Those who accuse (falsely). 5. Those who conspire.

375 Doubt 1. Do those who incite incur this irregularity?

376 Doubt 4. Do those who do not hinder incur this irregularity?

377 Concerning irregularity resulting from accidental homicide or mutilation.

378 Concerning the mutilation of limbs.

379 Doubt 1. What is meant by the term "limb"?

380 Doubt 2. Is one irregular who amputates the testicles?

381 And can Bishops grant dispensation from irregularity resulting from mutilation?

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382 See Busemb. and especially, does one incur irregularity by giving drink to a sick person, or by assisting someone in giving birth?

383 If one performs a licit act, he does not become irregular unless he adds a fault that is mortally sinful.

384 The following are excused: I. A master or father who chastises, if, etc. II. One who rides a fierce horse. III. One who feeds a wild beast that is tied up. IV. One who reflects in a mirror. V. A cleric who performs surgery, or a monarch who performs a tonsure without incision or bloodletting.

386 What about a cleric who holds a benefice and performs surgery?

388 If one performs an illicit act, he does not become irregular if the act is not dangerous.

389 What if the act is dangerous?

390 What if one kills in self-defense or in the defense of innocence? And what if an adulterer kills his attacking husband? Reference to I. 4, no. 389. See in order.

391 Is one irregular who kills in defense of liberty, honor, property, etc.?

392 How is irregularity resulting from homicide removed?

393 Can a Bishop grant dispensation from irregularity resulting from voluntary homicide?

394 And what if the homicide was entirely concealed?

395 What if the homicide was accidental?

396 Is accidental homicide committed in a ritual considered accidental?

397 And what if it was committed in defense, but exceeding the bounds of moderation?

398 How can regular prelates grant dispensation from irregularity resulting from homicide or mutilation with their subordinates? And how with lay people?

356.— ANSWER: The first is on account of a repeated baptism, done seriously and knowingly; and both the baptizer and the baptized are irregular; although in the case of rebaptism, the irregularity is only partial, so that the cleric cannot ascend to a higher order, nor does it occur if the rebaptism is done without intention of baptism.

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It should be concealed. Covar. Tolet. M. Leo p. 3. s. 348. See Bon. d. 7. q. 3. p. 3. Laym. l. 4. t. 5. c. 2. A concealed, and not solemn, rebaptism does not necessarily incur irregularity, as held by Salm. de cens. c. 8. p. 5. n. 60 (although Bon. d. 7. q. 3. n. 4. and Pal. d. 6. p. 46. n. 4. hold the contrary, as cited by Salm. dict. n. 60), along with Laym., Syl., and Con., from cap. Ex litterarum 2. de apostat., where, when speaking of one who has been rebaptized, it is stated: "He will not be promoted to higher orders (if it is publicly proposed), unless he wishes to enter a religious order; but if

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it is concealed, he may be promoted." Hence, note 4, that the irregularity against one who is knowingly rebaptized arises from c. 64, as confirmed in dist. 50. Against the one who performs the rebaptism, however, there is only a common opinion of Doctors, as testified by Salm. ibid. n. 59. And it is inferred from c. Ex litterarum, where it is declared that an acolyte is irregular for assisting at a rebaptism. One who performs a rebaptism, or who is rebaptized out of fear without intention, or under a condition (even if done rashly and culpably), is not probably irregular, as stated by Pal. l. c. n. 5. Suar. d. 34. sect. 6. dub. 5. Cont. Tourn. de irreg. part. 3 cap. 2. v. Queres 3. and Salm. ibid. n. 64. with Nav., Corn., and Avil. However, culpable ignorance does not excuse them, according to c. Quibus, de consecr. dist. 4. Conversely, if the ignorance is not culpable, Pal. n. 6. Salm. de cens. c. 8. p. 5. n. 62. with Sot., Sayr., etc. Note II: It is also irregular for one to be baptized by a declared heretic without any necessity, as stated in can. Ventum est. caus. 4. q. 4. Furthermore, one who delays baptism until the danger of death, according to c. Si quis, dist. 57. See Salm. ibid. n. 65. 357. — Secondly, through a violation of censure, for example, if he is burdened with it, he performs some act of the order solemnly, unless invincible ignorance excuses him. Laym. c. 3. 358. — Note here I: That one who celebrates [Mass] burdened with a lesser excommunication does not incur irregularity, according to c. Si celebrat, de cler. exc. min. Indeed, even if burdened with a greater excommunication, if he performs an act of the minor orders, even solemnly, and ex officio: thus Bon. q. 3. p. 5. n. 4. Laym. c. 3. n. 4. Nav. c. 27. n. 242. and 244. Anacl. p. 512. n. 43. and Avila, Fill., Corn. with Salm. l. v. p. 6. n. 66. Nor if he performs an act of the major orders, but not solemnly, that is, the diaconate without the stole, the subdiaconate without the maniple; since such acts can also be performed by cantors: Salm. ibid. n. 68. and Anacl. l. c. Nor one who solemnly sings the office, unless he is a hebdomadorius [one who sings the office for a week] of the chapter, solemnly saying the prayer with "Dominus vobiscum;" because such a ministry is exercised by priests, or deacons, by custom: Nor one who gives a sermon, because this office can be performed by one not instituted in the Sacraments, with the permission of the Bishop, since it is an act of jurisdiction, not of the Order; Suar. d. 12. sect. 2. n. 4. and Salm. ibid. n. 69. with Avil.

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Sylv., Sayr., Henr., etc. Nor does he who performs an act not of his order, but of jurisdiction, that is, if a Bishop excommunicates, or if a parish priest assists at a marriage; Anacl., n. 14, and Diana, Avil., Sylv., Sayr., Henr., etc., with Salm., dict., n. 69. Note II: To incur this irregularity, it is required that the censured person knowingly performs an act of his order, because this irregularity is imposed only for contempt of the censures. A Bishop, or another priest who is censured, compelling another to celebrate before

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him, becomes irregular according to c. Illud, de cler. exc. min. However, only the Pope can absolve from this irregularity, or a Bishop, if it is hidden; and regular prelates with their religious, even if it is public, as held by Bord., Sayr., Corn., Cand., etc., apud Salm., de cens., c. 8, p. 6, n. 72. Indeed, even with secular clergy, as stated by Peyr., Fragros., and Ant. à Sp. S., ibid., from the privileges of Martin V and Julius II. Note III: with Cabassut, lib. 5, c. 20, n. 43, that if someone celebrates in a polluted church, he does not become irregular; but he does become irregular if he celebrates knowingly in a prohibited place, because he already violates the censures by performing an act of his order, according to c. Is qui 18, de sent. exc., in 6. Note IV: with Anacl., p. 512, n. 46, and Nav., ibid., that he who is ordained by a Bishop who is excommunicated, suspended, interdicted, a heretic, a schismatic, or a simoniac, becomes irregular: argument, from c. Quod quidam, and c. Statuimus, caus. 4, q. 4, also from c. Ordinationes, q. 9, and c. 4, and 7, de schim., where such ordinations are said to require a dispensation. But does he incur an irregularity who is ordained unknowingly under a censure? See l. 6, n. 799, dub. 3, vers. Utrum, 359. — Third, on account of a sin, by which a cleric seriously and knowingly performs a sacred act of his order, which he does not possess, solemnly. Bon., loc. cit., p. 6. Laym., loc. cit., c. 3. Therefore, from this chapter (as Busembaum says), a cleric becomes irregular if he knowingly and solemnly ministers in a sacred act that he does not possess, as from c. 4, and 2, de cler. non ord. min. Indeed, if a non-deacon sings the Gospel with a stole, etc., or if a non-priest sacramentally absolves, solemnly baptizes, etc. But does a layperson performing an act of his order which he does not possess incur an irregularity? It is more likely that it is denied, according to the statements about baptism, lib. 6, n. 446, v. Dub. 3. He who is bound by a double censure, and performs a sacred act of his order, although he does not incur a double irregularity, he does incur one equivalent to a double one, and therefore he must express this in the petition for a dispensation: Cont. Tourn., de irreg., part. 3, cap. 4, concl. 2, v. Quæres. 2. A simple priest, by hearing confessions, does not incur an irregularity; because here he truly performs an act of his order which he already possesses, although he lacks jurisdiction, as rightly stated by the same Cont. Tourn., loc. cit. Therefore, he sins, but does not incur an irregularity. 360. — Fourth, on account of a fault, by which someone improperly receives orders, v. g.

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In cases of excommunication, suspension, or ordination by a bishop lacking jurisdiction, or irregularly (although this suspension is only valid as long as the individual does not minister in the order received irregularly, which is a point well-supported by Avila, Nav. Bonac.), or before the legitimate age, or without proper dispensation, or secretly (without the bishop's knowledge or approval), and without examination. See Bon. d. 7. q. 5. p. 4.

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Irregularity arises from a secret reception of orders in the following ways:

I. He who receives an order without the approval of the bishop, for he is prohibited from ascending to another order, according to c. 4, "de eo, qui furt."

II. He who, without the bishop's dispensation, receives multiple orders on the same day, one of which is the priesthood, according to cap. 2 and 3 of the same title.

III. He who receives holy orders after a marriage has been contracted but before it has been consummated, and the wife objects, as stated in Extrav. Antiquo de voto.

Other instances of secret reception of orders, as enumerated by Busemb., are discussed by Suar. d. 42. sect. 3. n. 5, Pal. d. 6. p. 47. n. 4, Salm. t. 40. c. 8. p. 7. n. 73, with Con. and Corn. These cases, rather than leading to irregularity, tend to result in suspension; nevertheless, for the absolution of such a suspension, recourse must always be made to the Pope: see note 348 above.

However, in this type of irregularity, the bishop cannot grant a dispensation if the crime is public and he himself, before the ordination, has commanded under pain of excommunication that no one secretly receive orders, according to c. 4 of the same title, as mentioned above; see Salm. ibid. n. 75.

Furthermore, as Fragroso and others state, the regulars can grant dispensation even to secular clergy, just as in other hidden irregularities, so too in this one, by virtue of the privilege of Sixtus IV and Julius II, as mentioned in note 355, in footnote 362.

"Fifth, due to notorious and public crimes, such as those that carry with them an attached infamy, for example, adultery, rape, incest, perjury in court. This irregularity, arising from infamy, as Croix states in l. 6. n. 842, is more properly considered an irregularity arising from a defect, rather than from a fault, since infamy is nothing other than a defect of good reputation. All infamous persons become irregular, according to c. Infames, caus. 6. qu. 4. And this is understood whether the infamy is according to canon law or civil law. Also, whether the infamy is of fact or of law, although Bon., with Azor, apud Salm. de cens. c. 8. n. 76, state that infamy of fact does indeed lead to irregularity with regard to receiving orders, but not with regard to ministering in those orders already received; whereas infamy of law leads to both.

363. To incur this irregularity, it is required that the crime to which infamy is attached be notorious, either by the notoriety of the fact or by the notoriety of the law, made known through public reputation. However, as Viva states in quæst. 9. art. 3. n. 6, with Castro, Hurt., Laym. Garc., and

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Pignat., apud Croix l. 7. n. 513 (contrary to Suar. Fill. etc.), it is required that the act not only be public, but also notorious; that is, so evident to the majority of the community.

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In colleges (where there are at least ten members), it must be ensured that no tergiversation can be concealed. Furthermore, it is required, as Viva states in *ibid.*, that the crime be qualified, such as heresy or parricide, or continuous, such as concubinage. Infamy, however, is acquired through a confession of the deed in court, or through a sentence of the judge, at least a declaratory sentence of guilt; thus, Sanch. Dec. l. 2, c. 26, n. 1; Pal. p. 20, n. 3; and Salm. *ibid.* n. 82, with Con. Bon. Avila, Corn. *et al.* Crimes to which infamy is legally attached include homicide, perjury committed in court, heresy, simony, sodomy, the crime of lese majesty, adultery, treason, robbery, pimping, usury, assault on cardinals or bishops, and also abduction of women, or complicity therein, dueling, preparation for war against parents, *et al.* See Salm. *ibid.* n. 78. Also, the profession of a histrion with indecent performances, so that it is not done without mortal sin: this does not apply to a butcher, executioner, or similar professions, since these offices can be properly exercised without sin, as Pal. l. c. n. 6 and Salm. *ibid.* n. 84, with Corn. *contra alios* state. Furthermore, it should be noted that one can also incur irregularity due to infamy that is still external, as do the children of those who have been condemned for the crime of lese majesty; also, the children born from a prostitute; also, the children of heretics (although Viva denies this in art. 4, n. 6, as does also Suar. and Palao *contra alios*), and also grandchildren descended through the male line; provided, however, that it is notorious that the parents were heretics and died in heresy, as Sanch. l. 2, c. 28, n. 7 and Suar. d. 43, sect. 3, n. 1 state. In order for all of these to incur irregularity, it is necessary that they were born after the crime; thus, Sanch. l. 2, c. 27, n. 14; Less. l. 2, c. 34, n. 124; Pal. p. 49, §. 2, n. 2; and Salm. de cens. c. 8, p. 8, n. 83, with Bonac. and Henr. 364. This infamy and irregularity, if it is of fact, is removed either by baptism, or by a notorious amendment of conduct, without dispensation, as Suar. d. 48, sect. 2, n. 6; Pal. *loc. cit.* n. 14; and Salm. *ibid.* n. 85, with Henr. Bon. Corn. *et al.* state. It is also inferred from c. Si duo, 15, q. 6, that the amendment, in general terms, as Viva states in art. 4, n. 6, and Croia n. 547, with common opinion, must at least persist for three years. If, however, it is of law, it is not removed except by dispensation; although Bon. holds that this can also be removed by baptism, and Salm. l. c. n. 86 considers it not improbable. A bishop cannot dispense so that an infamous person ascends to the sacred orders due to infamy of fact; however, he can allow him to minister in the sacred rites, if the crimes are less than adultery, and the guilty party has made amends. If, however, the infamy is by sentence of the judge, irregularity can be removed by him through

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another sentence, by which the defendant's reputation is restored, Salmant. *ib.* n. 87, and Cont. Tourn. de irreg. part. 2, cap. 6, concl. 5. Irregularity due to the crime of parents, or due to an infamous profession, is removed by entering into religion, as Salm. *ib.* with Corn. Bordon. and Ant. à. Sp. testify that the regulars, by privileges of Pius IV and Pius V, can dispense with their subjects.

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In this irregularity, whether contracted before entering the religious life, or after; also, whether it involves infamy of law, or of fact, with no exception. 365. — "Sect arises from unjust mutilation, or homicide, even" indirectly, so long as it is voluntary; and it extends to all who unjustly contribute to another, whether in an unjust war, or outside of it, by advising or commanding. Mutilation is understood here as the separation of a principal member from the body, that is, a part of the body which has a distinct function of its own, such as the foot, hand, eye, ear, etc. M. Leo in practice, p. 3, s. 347, from Covar. Nav. de cens. n. 206. See Bon. p. 8. " (This is taken from Clement. unic. de homic. And this is true, even if one mutilates oneself, as in the case of self-castration, c. Si quis absciderit, dist. 55. Sayr. Corn. with Salm. de cens. c. 8, p. 2, n. 48. Just as it would be irregular for one to culpably disfigure oneself, or to cut off a finger, or part of a finger.) 366. — This irregularity, therefore, arises both from voluntary homicide (namely, when the homicide is either directly intended, or indirectly in a cause, inseparable and closely connected with it, as in a lethal wounding, or the administration of poison, etc.) and from accidental homicide, indirectly intended, namely, in a cause, with the foreseen effect (but not so closely connected with the cause), and with due diligence neglected to prevent it. Hence, we will note the following: I. Concerning voluntary homicide. II. Concerning accidental homicide; noting that what is said about irregularity due to homicide, is also said about irregularity due to voluntary or accidental mutilation. 367. — Concerning voluntary homicide, I. all those who kill a man by their own action incur irregularity, as is clear from c. Si quis 1. de homic. and from c. 7. Trid. sess. 14. 368. — But here is a doubt: 4. whether one who repents of the homicide before death, incurs irregularity? Salm. l. c. p. 4, n. 4, in fin. denies this, arguing that (as they say) at that time, death is not voluntary in itself for the murderer, but only in the cause, which, since it has already been retracted, no longer morally influences the death. But it is truer to affirm, as Suar. d. 44, s. 3, n. 7, and Viva de irreg. q. 9, a. 2, n. 4, state. For there is a difference between a moral cause and a physical cause: if one has placed only a moral cause, it is sufficient to remove it morally, so that the effect is not imputed to him; hence, one who commands a homicide, is excused from irregularity by revoking the command before its execution, because he then ceases to morally influence the death. But one who has placed a physical cause of death, namely, a

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wound, or poison; is not excused if he repents of it, because the cause necessarily continues to influence death. Indeed, Suar. d. 44, sect. 3, n. 13, in fin. correctly teaches that even one who commands is not excused from irregularity, if the revocation of the command does not reach the person commanded by chance.

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It is very probable (as we have said in n. 40, and as Salm. de cens. c. 1. p. 12. n. 453, with Suar. Sayr. Avila, Corn. etc., affirms, and as Viva himself agrees in his work) that one will be excused from excommunication for striking a cleric, if, before the execution of the blow, he attempts to dissuade the person giving the order, or the person receiving the order, even if the revocation of the order is not known to the person giving the order, because the contumacy required to incur the censure ceases. However, it is certain that if someone inflicts a lethal wound, but death does not follow, he does not incur an irregularity; because nothing is assigned by law for the attempt at killing, but only for homicide or mutilation; thus Suar. d. 44. sect. 2. n. 2, and Salm. in the aforementioned treatise, c. 8. p. 4. n. 4, with Avila, and Sayr, and others, generally. 369. — Doubt 2: Does one incur an irregularity if someone first strikes another lethally, but others afterwards kill him? Fagn. in o. Significasti 48. de homic., as well as Covarr. and Ugol. apud Bon. d. 7. q. 4. p. 8. n. 32, affirm this. And they infer from the aforementioned "Significasti" that the Pope said that the one who inflicts the first wound is not irregular, if it is established that the wound inflicted by him was not lethal; otherwise, if it was lethal. However, Laym. l. 3. s. 5. tr. 3. p. 3. c. 40, in the end, and Bon. in the aforementioned work, with Avila, and Con., as well as Molina, and Henr. apud Escob. l. 53. n. 314, deny this. However, I believe, with Esc. n. 312, that in the aforementioned "Significasti," nothing was definitively decided regarding this case; for there, indeed, a decision was made in the case presented, namely, that someone was first struck by one person, and then by others, and thus died; the Pope responded that if it is established that the first person did not inflict a lethal blow, he is not irregular. Otherwise, if it is doubtful whether the person died from the blow of that person, or from the wounds of others. However, our case, namely, that someone inflicts a lethal wound first, but is killed by others, I believe was overlooked by the Pope, or at least, it is not established that it was decided. However, this must be understood: if it is established that the first wound did not cause death, nor did it accelerate it, but that the second wound caused death, namely, if the head was fractured, or the heart pierced; otherwise, in this case, the first person does not escape the irregularity. 370. — II. All those who command or advise homicide incur an irregularity, as is stated in c. Si quis viduam, d. 50. c. Significasti 48. de homic., and c. Sicut 6. §. However, this does not apply if the person commanding or advising did not contribute to the homicide, namely, (as

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Sanch. Deo. l. 4. c. 40. n. 44, and Viva qu. 9. a. 2. n. 6, say) if it is established that the homicide occurred for another reason; or if he himself asserts this, and is worthy of belief; otherwise, as Sanch. rightly points out, he is not to be believed. 371. — But doubt 4: Should the person commanding or advising be considered irregular, if there is doubt whether the command or advice was, or was not, an effective cause of homicide? The first opinion is more common, as held by Sanch. l. 4. c. 40. n. 49.

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Regarding the end, with Salas, Pal. d. 6. p. 3. n. 8. and with Nav. and Salm. concerning censures, c. 7. p. 3. n. 45. with Con. Sayr. Avila, and Corn., it is affirmed that, unless the contrary is proven, one possesses the mandate or counsel; therefore, just as those who are externally condemned are considered irregular, so too should those be considered irregular who are subject to external law, which must always conform to the external law; and the external law is not vitiated by a false presumption. Furthermore, the reason for the text in c. Ad audientiam, namely that in cases of doubt concerning homicide, the safer course must be chosen, so that if, perchance, the murderer is later certainly identified, indecency and scandal may be avoided, includes both the murderer and the one who gives the mandate or counsel. The second opinion, which is held to be probable by Dian. p. 44. tr. 6. r. 42. Spor. t. 2. p. 430. n. 129. and Tamb. l. 40. de cens. tr. 4. c. 5. n. 44., denies this, because (they say) irregularity is not incurred unless it is expressly stated in the law; but the laws speak of those who are certainly the cause of homicide by giving a mandate or counsel, or who commit homicide with doubt, but not of those who only contribute to it with doubt. Therefore, just as one who gives a mandate or counsel for homicide would not incur irregularity unless this were expressly stated in the aforementioned texts, so too, other canons, which condemn those who inflict a blow, even in doubt as to whether death resulted from their blow, do not extend to those who give a mandate or counsel in a doubtful case. To the first reason, it could be responded that what is said concerning the obligation of restitution applies, as stated in l. 4. n. 562, from D. Th. and others. To the second reason, it is responded that in penalties, and especially in irregularities (according to what is stated in n. 346), there is no extension from case to case based on identity of reason. Therefore, this second opinion does not seem to be an improbable one.

372. — Doubt 2. Does one incur irregularity who incites a murderer who has already determined to commit the crime, so that he may carry it out more quickly? Hurt. denies this with others, ap. Vvam q. 9. a. 2. n. 7., because here one would not simply be influencing the homicide. But, commonly and correctly, Bon. d. 7. q. 4. p. 8. n. 28. Pal. p. 45. §. 2. n. 6. and Salm. de cens. c. 8. p. 4. n. 43. with Avila, and Corn., affirm that, indeed, this person is directly the cause of that homicide at that time.

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373. — Doubt 3. Does a counselor concerning homicide excuse himself from irregularity if he revokes the counsel before its execution? Nav. c. 27. n. 353. and Bon. d. 6. p. 8. n. 20. deny this with Azor and others, because the counsel, even if revoked, always has an influence. Suar. d. 44. s. 3. n. 43. affirms this with the common opinion, as asserted by Sylvest. v. Homicidium, n. 43. Fill. tr. 20. n. 34. also P. Nav. Avila, Sayr. Salas, and Ugol. ap. Bon. l. c., because, as the counselor is excused, it is sufficient that, just as he morally influenced the situation by giving counsel, so too, he morally removes that influence by revoking the counsel (provided that the revocation is understood by the murderer); then, the homicide is attributed more to the malice of the executor than to the counsel of the one who incited it. But according to...

[*Latin ed. p. 450*]

It is stated in book 4, chapter 559, that if the advice given is solely based on falsehood, or if it is given in an authoritative manner, then the revocation of that advice does not constitute irregularity; however, if the advisor suggests a motive or method for killing, then irregularity is more likely to occur, because the motive or method always exerts an influence. Nevertheless, I do not consider the second opinion to be improbable. See d. n. 559, 374. — III. All those who voluntarily cooperate in murder, or in order to make it happen more quickly, boldly, or securely, incur irregularity, as is commonly taught by Pal. d. 6. p. 15. §. 2. n. 6; Bon. d. 7. q. 4. p. 8. n. 28; Tamb. de cens. c. 45. §. 7. n. 26, with Sayr, Præp., Ugol., and Salm. de cens. c. 8. p. 4. n. 43, with Cornejo and Avila, from c. Sicut, §. Qui verò, and §. Clericos, de homic. Therefore, the following are irregular: 1. All those who incite others to murder, even if only one person commits the act. 2. All those who participate in an unjust war, if someone is killed in it, even if they do not intend it; in this case, they at least incur the irregularity of accidental homicide. 3. All those who provide weapons or money for murder, or to promote an unjust war. 4. All those who unjustly accuse, testify, or judge, leading to the death of a person. 5. All those who associate with a murderer, encouraging him; as commonly stated by Viva q. 9. ar. 2. n. 3; Tamb. l. c.; and Salm. ibid. n. 14, with Bon., Avila, Giball., and Corn. Therefore, Tamb. l. c. n. 28, with Sayr, Præp., and Ugol., states that if, in a quarrel, you show yourself to a friend who is quarreling, you will already be irregular if that friend kills someone, because your presence already encourages him. Furthermore, with Præpos., it cannot be approved that a father is excused from irregularity for associating with a son who is fighting, lest the son be endangered, if the son kills another. Viva q. 9. ar. 2. n. 8, with Avila, states that it is also irregular for someone to advise a friend to kill an enemy, or to expose himself to a probable danger of death, if the friend is subsequently killed; see n. 387, below. 375. — Doubt 4: Does one incur irregularity by approving of a homicide committed in one's name? Nav. cap. 27. n. 233, and

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others, such as Mol. Sylv., etc., apud Salm. de cens. c. 8. p. 4. n. 44, affirm this, because (as they say) those who approve are equated with those who command; therefore, in c. Cum quis, de sent. exc. in 6, those who approve of a blow struck by a cleric in their name already incur excommunication. However, it is truer, and commonly stated, that Suar. d. 44. s. 3. n. 24; Bonac. d. 7. q. 4. p. 8. n. 42; Salmant. ibid. n. 12, with Corn., Diana, Giball., Vill., and Leand., and Escob. l. 53. n. 288 and 289, with Con., Avila, Cov., Sayr., and Henr., deny this. The reason is that there is no law that imposes irregularity on those who approve. Approval is equated with command in terms of guilt, but not in terms of penalty, unless it is expressly stated in the law, as is the case with those who approve of a blow struck by a cleric with respect to excommunication, but not with respect to incurring irregularity.

[*Latin ed. p. 451*]

378. — Objection. Whether one incurs irregularity by failing to prevent a homicide when able to do so, and culpably refraining from doing so? If one is only obligated to prevent it out of charity, it is certain that all agree that one does not incur irregularity if one fails to do so; but if one fails to do so out of hatred, then it is commonly held, as in Suar., d. 45, s. 4, n. 3; Bon., d. 8, q. 4, p. 8, n. 37; and Salm., l. c., p. 3, n. 39, with Avila, Sayr, Fill., Giball, Henr. Cor., etc. The doubt arises whether one incurs irregularity if one is obligated to prevent it out of justice, by reason of a pact or office; namely, if one is a physician paid by a salary, an advocate who is obligated to defend the accused, a gatekeeper, a father, a tutor, a lord, or a husband who is obligated to provide sustenance to his wife? The first opinion holds that one does not incur irregularity, and this is held by Roncag., cap. 3, qu. 3, p. 116, v.; Non pauci, Hurtad., d. 2, diff. 9, n. 34; Turr., d. 63, dub. 5; Diana, p. 4, tr. 2, c. 7, with Vasquez and Tamb.; also Prap., Leand., and Giball, apud Salm., ibid., n. 41, and they consider it probable, as Pal., d. 6, p. 15, §. 7, n. 2, and Escob., lib. 53, n. 345, state. The reason is that one who actively contributes to a homicide should be judged differently from one who does not prevent a homicide. The second opinion affirms that one does incur irregularity, and this is held by Nav., c. 27, n. 231; Suar., d. 46, s. 4, n. 5; Pal., l. c., n. 2; Bon., l. c.; Tol., l. 1, c. 83, n. 4; Cont., Tourn., de irreg., part. 3, cap. 1, art. 1, concl. 2; Escob., l. c., with Man., and Henr., and Salm., de cens., c. 8, p. 3, n. 42, with Avila, Sayr, and Corn. The reason is that one who, being able to do so, omits to defend someone whom one is obligated to defend by justice, is considered a true homicide, since one, if not physically, then morally, contributes to the homicide. This opinion is commonly held and probable, but I consider the first opinion to be no less probable; for since irregularity must be expressly stated in law, Ronc. rightly says that it does not sufficiently follow from the canons that those who omit to prevent, but offer only a moral reason, incur irregularity, but that those who actively kill, command, advise, and

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all who positively contribute to a homicide do incur irregularity. The same Cont., Tourn., and Escob., ll. cc., excuse from irregularity those who omit to prevent, not out of a desire that someone should be killed, but only out of fear or negligence; and this is rightly inferred from c. Quæsitum, de pæn. et rem., where parents, by whose fault their children die in the cradle, are considered irregular if they negligently failed to prevent suffocation, but not if their children died through their own negligence.

377. — This concerns voluntary homicide; but with regard to accidental homicide, one incurs irregularity even by one who foresees the danger of death through one's own action, and culpably fails to prevent it; thus, Pal., d. 6, p. 15, §. 5, art. 3, and Salm., ibid., n. 29, with Avila, Cov., and Henr., and others, as is evident from Clem., Si furiosus, de homic. It is said that one does so culpably, for in order to incur irregularity from a sin, it is required that there be a grave fault, which presupposes a mortal sin, as commonly taught by Bon., d. 7, q. 4, p. 7, in fin.; Pal., d. 6, p. 15, §. 4, in fin.; Suar., d. 45, sect. 5, n. 8; Cont., Tourn., loc. cit., r. 2.

[*Latin ed. p. 452*]

Council of Trent, Session 10, p. 490, n. 7; Salm, op. cit., n. 30; Avila, Sayr, Corn, and Viva, q. 9, art. 2, n. 10; Cajetan, Arm. etc., 378. — "1. One is not considered to incur a canonical penalty if, in a fight, he cuts off another's finger, thumb, nail, teeth, beard, hair, lips, nose, or ear (that is, the cartilage which serves only for adornment and the protection of the ear); because these are not proper members. For example, a finger is only a part, and the function of a member, as Avila and others state, 8, with Diana, p. 4, t. 4, r. 26. Also, M. Leo, op. cit., from the Glossa, c. ult. de hom. in 6, and L. Quæritur 10, L. Non sunt 14, §. Partus, ff. de statu hom. 379. — Therefore, a canonical penalty is incurred even due to the mutilation of a member, as is stated in c. Significasti, de homic., and in Clem. Si furiosus, eod. tit. But it is doubted 4, what is meant by the term 'member'? The first opinion, held by Suar. d. 44, sect. 2, n. 7 and 8, and Sotus, Cajetan, Arrag., etc., apud Salm., de cens. c. 8, p. 2, n. 21, is that it should be understood not only as the eye, hand, etc., but also as the nose, fingers, and ear, because, as they say, the removal of these already takes away the integrity of the body. But, most commonly and more probably, Bon., q. 4, p. 8, n. 3; Pal., d. 6, p. 45, §. 1, n. 4; Council, c. 10, p. 489, n. 4; Habert, c. 7, q. 566; Cont. Tourn., de irreg. part. 2, cap. 8, art. 1, v. Ex quibus, Cap. l. 5, c. 20, n. 9, with Nav., Avila, and Salm., ibid., n. 22, with Val., Cov., Sayr, Diana, Hurt., Gob., etc., state that, by the term 'member,' only those parts of the body are understood which have a proper function distinct from others, such as the eye for seeing, the hand for acting, the foot for walking, etc. Therefore, it is more probable, as Pal. and Cont. Tourn. state, op. cit., and Salm., ibid., n. 24, with Avila, Cov., Sayr, Corn., etc., that one does not incur a canonical penalty if he amputates the ear, because, when it is removed, not all the function of hearing is taken away; nor if

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he pulls out teeth; because they are not members, but instruments of the maxilla for chewing food, as Bon., n. 2; Pal., n. 4; and Salm., dict., n. 24, with Sayr, Diana, and Giball. And even less so if he cuts off hair or beard. Also, it is not the case that one incurs a canonical penalty if he cuts off another's finger, as Bonac., Pal., Cont. Tourn., and Salm., op. cit., with Val., Avila, Cov., Sayr, Hurt., Corn., and others, commonly state. Nor does the text in c. 6, Qui partem, dist. 55, object, where it was declared that one who amputates his own finger or part of a finger is irregular; for it is answered, with Cont. Tourn. and Habert, that it was not a canonical penalty imposed for the mere mutilation, but for the wicked will, which caused him (as it is said there) to insert iron. 380. Doubt 2. Is one irregular who amputates another's testicles? Bon., Hurt., Avila, and Corn. state, apud Salm., de cens. c. 8, p. 2, n. 23, that he is not irregular, because (as they say) they are not a member, but a part of a member. But it is more probable that Ronc., c. 3, q. 3; Pal., d. 6, p. 45, §. 4, n. 4; and Salm., op. cit., and Diana, p. 9, tr. 7, r. 41 (although elsewhere she states the opposite) affirm that one is irregular, because the testicles already have a proper operation, namely, the formation of semen.

[*Latin ed. p. 453*]

It is fitting for generating offspring (understand, however, if the severance is unjust). It is, however, a defect if only one testicle is removed, because one does not have a function distinct from the other, since both contribute to the same operation. It would be irregular, as rightly say Pal. d. n. 4. Cont. Tourn. Habert. Conc. and Salm. cited, n. 23, in the end, with Sayr. and Bon., who would sever one breast from a woman, because each breast has its own proper function. Suar. and others teach the same in Vivam de abscissione dimidiæ manus; but this contradicts Cont. Tourn. in the aforementioned passage. Regarding parts, because in chapter 2, concerning sick clerics, he who lost two fingers along with half of the palm is not said to be mutilated, but weakened: however, they commonly say Nav. c. 27, n. 223. Cabass. l. 5, c. 20, n. 9, with Suar. Con. and Avila, Salm. ibid. n. 25, with Soto, Bon. Cov. Sayr. and Avila, and Croiæ l. 7, n. 487, with Suar. and Sylvio (against Caj. etc.), and Ronc. l. c. considers it probable that it is not irregular for one to weaken another's member, even to the point that it renders him unfit for his office. Indeed, even if it leaves him dead, as they say Pal. §. 1, n. 5, and Nav. Cov. etc. apud Salm. l. c. n. 26. But this is strongly contradicted by Suar. d. 44, sect. 2, n. 11. Cabass. l. c. Conc. p. 490, n. 5, and Salm. ibid. n. 27, with Corn. etc., because such a member, although not apparently mutilated, is nevertheless considered removed, since it is no longer animated and connected with other members. Therefore, Salm. in the aforementioned n. 27, probably infers the opposite, that it is not an irregularity to completely desiccate and remove such a member, because that would not be a formal mutilation. 384. — In this irregularity, due to mutilation, Bishops can grant dispensation, if it is hidden, by virtue of

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the Tridentine Council in chapter 6, "Liceat," session 24, where only the irregularity due to voluntary homicide is excepted, as commonly taught by Suar. d. 44, sect. 2, n. 4. Pal. l. c. n. 3. Bon. p. ult. n. 11, and Salm. de cens. c. 8, p. 2, n. 28, with Fill. Avila, Corn. Diana, Gob. Villal. etc. 382. — "2. It is not irregular for one who blinded a man by depriving him of sight, but not by removing the eye; nor for one who merely weakens a member, and does not sever it, because it is not mutilation. Dian. p. 4, t. 4, r. 26, from Megal. etc. 3. When several (not by agreement, but in a fight) strike one, and one inflicts a lethal wound from which he dies, if it is established who did this, only that person is considered irregular, as taught by Sayr. and others 5, with Diana p. 2, t. 15, r. 18, against Avil. Suar. etc. 4. He who, in good faith, gives something to a sick person, e.g., food, or drink, or moves him, or transfers him from a bed to a bed, or does something else concerning him, from which death, or its acceleration, follows contrary to his intention, is not irregular, unless there is a grave fault, Avila, Fill. and others 4, with Diana p. 5, t. 3, r. 17, where it is noted from Bon. etc., that priests,

[*Latin ed. p. 454*]

"To religious persons, the same things are permitted concerning the dying as are permitted to laymen." (Thus also, *Cont. Tourn.*, part 3, chap. 4, art. 2, concl. 4; *Conc.*, p. 490, n. 7; *Elbel*, p. 472, n. 171, with Fill., Avila, and Salm., ibid., p. 3, n. 33, with Corn. and Pelliz.); "A priest does not become irregular by ordering a prescribed amputation to be performed by a physician, provided that he himself does not carry it out" (*Cabass.*, l. 5, c. 49, n. 22). Indeed, it is highly probable (*Cono.*, p. 504, n. 20) that one is excused from irregularity by assisting a surgeon in properly amputating a sick person. However, is one irregular who performs such an act so that the sick person dies more quickly? Some affirm this (e.g., *Cov. Nav.*), but Pelliz. and *Cono.* deny it, and Salm. considers it highly probable (*l.c.*, p. 3, n. 33), because, although a grave sin may be present, there is not necessarily a gravely unjust external act. Therefore, it seems to me that the distinction we have used in the obligation of restitution, as stated in l. 4, n. 554, should be applied; one must consider whether sufficient diligence is used to prevent the death of the sick person. Certainly, one becomes irregular who rashly offers a remedy from which death would notably be accelerated (*Salm.*, *de cens.*, c. 8, p. 3, n. 33, in fin.). However, it is always required for irregularity due to a fault that there be a grave fault with a mortal sin, as stated by Salm., *Cont. Tourn.*, *Cono.*, and others cited, n. 348 and 377.

5. One who accompanies a friend with good intentions does not become irregular, even if the friend kills another, provided he does not endanger himself in the altercation (*Avila*, *Henr.*, etc., with *Dian.*, p. 4, t. 2, r. 47). However, the Preceptor limits this, stating that it only applies if his presence does not incite the friend to kill. (See n. 374.)

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6. In an unjust war, if even one person is killed, the entire army becomes irregular, at least if it has cooperated in any way (*Bon.*, q. 4, p. 9, n. 3).

7. One becomes irregular who procures an abortion in a fetus that has a rational soul; otherwise, if the fetus is not animated, one is not irregular (*C. Majores*, 32, q. 2; *Bon.*, *l.c.*, p. 8, n. 27; *Cono.*, etc.).

8. One who undertakes a lawful (indeed, according to many, even an unlawful) action, using sufficient diligence to prevent homicide, and yet homicide results, does not become irregular due to a lack of will; however, one does become irregular if one omits that diligence, through a mortal omission (*Bon.*, q. 4, p. 7; *Less.*, l. 2, c. 9, dub. 15, etc.). However, others say that one who undertakes an unlawful action, through any fault, even the slightest, incurs this irregularity (*Panorm.*, *Cov.*, *M. Leo*, p. 3, f. 354, 383).

Therefore, it must be distinguished: if one undertakes a lawful action, and uses due diligence to prevent homicide, one does not incur irregularity if death occurs; thus, *comm.*, Pal., d. 6, p. 14, §. 4, n. 7; *Bon.*, d. 7, q. 4, p. 7, n. 8; *Conc.*, t. 10, p. 490, n. 7; *Cont. Tourn.*, de irreg., part 3, chap. 4, art. 2, concl. 4; *Salm.*, *l.c.*, n. 30, and others, *passim*, with *D. Th.* 2.2, q. 64, art. 8, ad 3, where it is stated: "According to the canons, a penalty is imposed on those who, by chance, kill someone while undertaking an unlawful action, or who do not use due diligence. And it is clear from c. Those who..."

[*Latin ed. p. 455*]

c. "Saps," and c. "Si duo fratres," no. 50; also from c. John, c. "Dilectus"; and c. "Ultimus" concerning homicide. Conversely, if sufficient diligence is lacking, this is inferred from c. "Presbyter," and c. "Ad audientiam," concerning homicide. For, when someone negligently acts in preventing a homicide that is feared, he indirectly intends it in the matter. It is said to be "sufficient diligence" because the highest degree of diligence is not required, but rather that which a prudent man would use according to the nature of the matter; as rightly say Salm. de cens. c. 8, p. 3, n. 30, with Cajetan and Cornelius. And conversely, any negligence is not sufficient to incur irregularity, but rather that which amounts to mortal sin, as commonly taught by Suarez, d. 45, sect. 5, n. 8; Bonaventure, l.c., at the end; Palearius, § 4; Council of Trent, l.c., Cabassus, l. 5, c. 20, n. 10; Cont. Tourn. loc. cit., r. 2; Sylvius, 2. 2, qu. 64, art. 8, concl. 3, with Soto and Bannitus; Salm. dict. n. 30, at the end, with Sayr; Cornelius, and Avila, and Diana, p. 2, tr. 2, r. 24, with Consentius; Fillius, and communis. For, in order to incur any irregularity from a fault, a grave fault is absolutely required, as demonstrated by Cabassus, l.c., ecc. c. "Quaesitum" concerning penance, and c. "Finis" concerning homicide, no. 6. See the aforementioned notes, nos. 348, 377, and 384.

— Therefore, a teacher is not irregular if he moderately strikes a student

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(and the same applies to a father with respect to a son), if, by chance, death results from the blow, as stated by Council of Trent, d. n. 7, and Salm. ibid., n. 31. Conversely, if he exceeds the limit severely, as is evident from c. "Presbyter," concerning homicide, and c. "Ultimus" of the same title, no. 6.

II. He who, while riding a horse, kills a child; Council of Trent, ib.; and Bonaventure, n. 23, with Moliner; Sayr; and Ugolini, ecc. c. "Dilectus," 43, concerning homicide.

III. He who keeps a wild beast or a ferocious dog, and hides it, if, by chance, the beast kills a person after breaking its bonds; conversely, if it were loose in the street, where the beast could harm others; or if the beast was released through his negligence; Salm. cit., n. 31, with Covarrubias and Cornelius.

IV. He who, while repairing a roof, throws tiles and stones, warning those passing by to be careful; conversely, if he does not warn them; Salm., l.c., at the end.

V. A physician, if a patient dies by chance from a medicine administered, without grave negligence on the part of the physician, as inferred from c. "Ad aures," concerning citizenship, and quality, of orders. And this is true even if he is a cleric or a monk, lest he be considered unskilled; for otherwise, he would not incur irregularity if he administered a remedy, even contrary to the doctor's prescription, from which death or a notable acceleration of death would result, as rightly say Salm. ibid., n. 33, at the end; Cont. Tourn., part 2, cap. 8, art. 4, v. "Duo." 2. A cleric. And Bonaventure, d. 7, q. 4, p. 5, num. 4, with Moliner; Sayr; Henricus; and communis. (Conversely, if he gives something to a sick person for his remedy or relief, in good faith, as Bonaventure, p. 7, n. 12, and Salm. de cens., o. 8, p. 3, n. 33, with Cornelius and Pellizarius; see aforementioned note, no. 382, v. 4. Who is sick.)

Molest 2. A cleric who performs a surgery without incision or cauterization, otherwise, since it is expressly forbidden for clerics and monks to do so, under the penalty of irregularity, in c. "Sententia," namely, that clerics or monks are irregular if death results from such an incision or cauterization; conversely, if it occurs from another cause, namely, from the force of the disease itself, or from...

[*Latin ed. p. 456*]

Another cause, as Pal. d. 6. p. 15. §. 4. n. 8. at the end, and Salm. ibid. no. 32, state, together with Avila, Corn., and Henr. However, if another expert is absent, a cleric or monk can, without sin and therefore without any danger of irregularity, use incision or cauterization, as commonly taught by Pal. Cont. Tourn. with Mol., and Salm. ll. cc. with Avila, Henr., and Corn. 385. But does a cleric who is a beneficiary become irregular by performing

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a medical procedure with incision beyond what is necessary, if the patient dies from it? Nav. Panorm. etc. assert this in Cont. Tourn., because (as they say) what is prohibited to those who are ordained for the sacred duties is also prohibited to a beneficiary. But it is truer to deny this, as Bon. p. 5. n. 4. states with Mol., and the same in Cont. Tourn. in the aforementioned passage. This is because the aforementioned rule is assumed by the opponents, but is not sufficiently proven by law, and because in the aforementioned text, the sentence only refers to those who are instituted in the sacred duties; and penalties are not to be extended from case to case in a matter not expressly stated in law. And although we have said that in the case of negotiation and games, not only those instituted in the sacred duties, but also beneficiaries are involved (l. 4. n. 834 and 895), nevertheless, since in this case the prohibition is specifically made for subdeacons, deacons, and priests, those who are lower than these are not included, whatever they may be. 386. If someone engages in an illicit act, and death results from it, the common opinion is that if the act is not illicit because it is dangerous, but for another reason, then he does sin, but does not incur irregularity, provided he has used sufficient diligence to avoid death; for example, if someone were to cut down a tree on another's land, and a person were killed purely by chance; or if someone were to induce another to steal without danger, and that person were killed by chance, and similar cases. The reason is that such a homicide would not be voluntary to him, nor directly, since it was not intended, nor indirectly in its cause, since such an action is not inherently dangerous; for the laws that establish irregularity intend to punish those who are truly guilty of homicide; but that action, although bad, is not bad with the malice of homicide; for as the most learned Doctor Thomas teaches (1. 2. q. 76. art. 3.), invincible ignorance of the circumstances of a sin excuses from its special malice, even though the act itself is a sin; thus, commonly Suar. d. 45. s. 6. n. 9, Sotus de just. l. 5. q. 1. art. 3., Navar. c. 27. n. 221, Pal. d. 6. p. 15. §. 4. n. 5, Conc. p. 494. n. 8, Cont. Tourn. de irreg. part. 3. cap. 1. art. 2. concl. 2. v. Prob. 3, Escob. l. 53. n. 300. with Cov., Val., and Henr., and Salm. de cens. c. 8. p. 3. n. 34. with Corn., Avila, and Sayr., against Palud., Gabr., and others, apud Suar. l. c. n. 1, who cite for themselves D. Th. in 2. 2. qu. 64. art. 8, but not rightly; for although the Holy Doctor says there that one who engages in an illicit act does not incur the guilt of homicide, he clearly means an illicit act because of the danger of homicide, as is clear from the responses to 1 and 2 there. Nor does it matter that in c.

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While a cleric is engaged in an action, and concerning those who, according to Dist. 50, are deemed irregular if they cause death or injury; and only those who are engaged in a licit act are exempt, as stated in John, ch. Dilectus, and the final chapter on homicide. Therefore, he who is engaged in

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an illicit act from which death results, immediately becomes irregular. It is responded that these canons always intend to speak of homicide, whether direct or indirect, as can be gathered from Clementine, on homicide, where he who is engaged in a licit act is excused because the homicide is not voluntary to him; and therefore, homicide is always entirely involuntary to someone, and irregularity is not imposed upon him, even though he himself is engaged in an illicit act.

387. A greater doubt arises: does one incur irregularity if he is engaged in an illicit act, however dangerous, if death results from it? There are two probable opinions. The first opinion affirms, and is held by Suar. d. 45, sect. 6, n. 9; Nav. c. 27, n. 237; Tolet. l. 4, c. 77, n. 7 and 8; Conc. p. 491, n. 8; also Sayr, Avila, Mol., and Ugol. apud Bon. d. 7, qu. 4, p. 7, n. 9; and Sotus Cordub., Castro, Fernand. etc. apud Dian. p. 4, tr. 2, r. 20. They prove this from c. Tua nos 49, on homicide, where a certain monk, by accidentally causing an abscess in a woman, although he was skilled, and the woman subsequently died due to his negligence, was nevertheless declared guilty, and the Pope said: After due satisfaction, he can be treated mercifully, so that divine mercy may be celebrated. These words, as Fagnan states in the aforementioned work, and Suar. l. c., according to common understanding, signify that a dispensation was necessary. Therefore, the general rule is that irregularity is incurred from an action unjustly dangerous, whenever homicide, even accidental, follows.

The second opinion, however, is more probable, and is held by Pal. d. 6, p. 45, §. 4, n. 5; Cont. Tourn. l. c. v.; Laym. l. 3, tr. 3, p. 3, c. 40, n. 4 (who calls it safe); Sporer t. 2, p. 133, n. 139; Tamb. de homic. c. 45, §. 2, n. 12; Elbel t. 2, p. 467, n. 489, with Sayr and Gutt.; Bonac. loc. cit.; with Salon, Salm. de cens. c. 8, p. 3, n. 38, with Henr. etc.; and Diana l. c., with Con. Hurt., Præp. Sa, and Tann. states that if the work is so dangerous that death frequently results from it (such as moving a bomb near a crowd of people, or fighting in war, or inducing another to recklessly expose himself to the danger of death, as is more probable according to Bonac. n. 17, with Suarez, etc., and Viva with Av. see n. 574, against some), then irregularity is incurred, even if all diligence is used to prevent death, because (as Cont. Tourn. rightly says), when the work is inherently dangerous, no diligence can make it non-dangerous. Otherwise, if the work rarely leads to death, and due diligence is used to prevent death, because then (as we have said) the homicide is not voluntary, neither in itself, nor in its cause; because the work is not.

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The case is perilous, but with due diligence, it is sufficiently excused from the malice of homicide. However, the passage cited in d. c. Tua nos, is answered by Soto in *De Justitia*, book 5, question 4, article 9, and by Lessius in book 2, chapter 9, number 405, where it is stated that the monk was declared to be the least irregular; but this answer does not satisfy me,

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for the words of the text cited above clearly indicate that he has already incurred irregularity, and that dispensation is easier to obtain, and thus the author of the argument explains it, saying there: "But it can be dispensed with mercifully." And thus, others commonly do so, as testified by Suarez. A better answer is given by Pal, Bonaventure, and Salm, who state that the case is particular in law (as is also the case of one who commands a flogging, if the one being flogged is subsequently killed, according to the last chapter on homicide in book 6). Furthermore, we say with Salm that such a monk was already irregular, because he had practiced surgery with incision, as Innocent III declared in chapter *Sententia*, that neither clerics nor monks, then because of indecency, nor because such an art is itself most dangerous to life; hence that constitution was declaratory, rather than establishing new law. Nor does another passage in chapter *Contineb. 8* on homicide object, where a certain deacon was condemned as irregular who, while carrying a hidden scythe, and while playing with another, was the cause that this one, embracing him, was struck by the scythe and died. For it is answered with the Gloss there, *Romani*, and Suarez in *d. 45*, section 5, number 3, at the end, and Bonaventure in number 22, that this was so decreed because the deacon was negligent in carrying the scythe in that way; hence Suarez and Bonaventure say that if he had noticed the danger very little, he would not be held to act as an irregular. From this second opinion, Pal, number 7, Laym, number 3, Elbel, number 212, and Salm in *De Censuris*, chapter 8, page 3, number 38, and others, infer that a cleric is not irregular if, while participating in tournaments or hunting wild animals, the death of someone occurs; because such actions are not inherently conducive to homicide, nor would they even be permitted to laymen, unless, that is, he committed a grave negligence in these or similar matters, amounting to mortal sin, as stated in numbers 383, at the end, and 388-9. He who mutilates or kills another, in necessary self-defense with moderation and without unjust provocation, does not incur this irregularity: because there is no fault here; therefore, there is no penalty. M. Leo, page 3, f. 449. He who kills another in self-defense with moderation and without unjust provocation, is certainly excused from irregularity, as is clear from chapter *Significasti 48*, §, at the end, on homicide, and from Clement in the same title, where it is said: "And the same (that is, he does not incur irregularity) we think of him who, if he cannot otherwise avoid death, kills or mutilates the aggressor." Nor does the Council of Trent, session 14, chapter 7, object, where it says also of him who killed by chance, or by repelling violence, so that someone might defend himself from death...

[*Latin ed. p. 459*]

It is indeed the case that a dispensation may be granted in some way; for the Doctors understand the text in this manner, when that person has not observed moderation; thus Ronc. de irreg. c. 3, q. 4; Salm. de cens. c.

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8, p. 4, n. 58, with Avila, Pal., and Barb., from the common opinion; and Cont. Tourn. de irreg. part. 2, cap. 8, art. 2, in the beginning, with Nav. Sayr. Comit., etc., from the declaration of the Sacred Congregation of 4 October 1688. However, it is undoubtedly the case that irregularity is incurred by one who, with grave fault, exceeds the bounds of moderation, as is clear from Clement, cited above, from c. De his 6, dist. 50; see Ronc. loc. cit. p. 446. However, in this case, homicide is considered accidental, and therefore the Bishop (if the crime is hidden) can rightly grant a dispensation in such an irregularity, as will be explained shortly in n. 395. He is also excused from irregularity who kills an unjust aggressor upon another innocent person, as stated by Suar. d. 46, sect. 3, n. 2 and 3; Ronc. loc. cit. with Barb.; also Less. Con. P. Nav. Bon. Fill. and Cov. ap. Cabass. l. 5, c. 49, n. 24, who adhere to this opinion, contrary to others, because irregularity is not incurred from private homicide unless with mortal sin, as is deduced from c. Ex litteris primo loco de homio. It is, however, very probable that Ronc. loc. cit. with Suar. and Salm. loc. cit. n. 50, with others, hold that if one provokes another with words or deeds, foreseeing that he will easily be attacked, he becomes irregular if, afterward, for the sake of defending himself, he kills the aggressor, because then he is giving his attention to a matter that is illicit and very dangerous; otherwise, if he does not foresee it. What, however, should be said if one kills the husband of another woman by approaching her? See the statements in l. 4, d. 398, v. In order, where we said that the adulterer is not excused from irregularity if he foresees the imminent danger of the invasion, because then the adultery is very close to homicide; otherwise, if he approaches cautiously, so that he believes the danger to be remote. What if a man, knowing of the adultery, kills his wife, does the adulterer become irregular? In the same way, we have distinguished, see loc. cit. in fine, 389. — Question: Does one who kills another for the defense of liberty, honor, chastity, or temporal goods, with moderation that is lacking, incur irregularity? The first opinion affirms, and this is held by Laym. l. 3, tr. 3, p. 3, c. 9, n. 3; Cont. Tourn. loc. cit. dub. 5; and Spor. de 5. præc. c. 2, n. 477, with Nav. Sylv. Arm. Henr. Avila, etc., and they prove it from c. Suscepimus, de homic., where a certain religious person was declared irregular for killing two robbers in order to preserve his goods. They also prove it by reason, because although in such a homicide there is no sin, there is a lack of gentleness, for which reason irregularity is always incurred, except in cases expressly stated by law, and in the law, only he is excused from irregularity who kills an aggressor in order to preserve his life, as is stated in Clement. If he is mad, de homic., as above. The second opinion, however, is more common and more probable, and it denies this, and this is held by Suar. d. 46, sect. 2, art. 4 (who calls it the common opinion); Less. l. 2, c. 9, n. 73; Pal.

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d. 6, p. 45, §. 8, num. 7; Fill. tr. 20, c. 4, q. 6.

[*Latin ed. p. 460*]

n. 446. *Bonifacius de Officio*, book 7, question 4, paragraph 6, number 10. *Concilia*, book 48, paragraph 9, number 88. *Holzhauser*, volume 4, page 294, number 583. *Elbel*, page 459, number 495. *Roncaglia*, book 3, question 4, with Barbatus and Salmeron, on censures, book 8, paragraph 4, number 56, with Sayr and Villalonga. And it is proven in 4 ways: from the chapter "Quia te," in the *Decretum*, distinct 50, where, when a certain Bishop, having been captured by Saracens, killed some of them in order to defend his freedom, Urban II responded to him in this way: "But since you are not known to have done this of your own accord, you shall not be judged canonically in any way." Also, from the chapter "Interfecisti," where he who kills another while defending himself and his own is excused from irregularity, and this conjunction has the force of disjunction, that is, if he defends himself or his own, otherwise he who defends himself and not his own would become irregular; furthermore, the Pope would have added "or his own" in vain, if the irregularity were avoided only for the sake of defending oneself. Furthermore, this is more strongly proven from the chapter "Dilecto," in the *Extra*, book 6, where, when a certain temporal lord violently seized the goods of a certain dean, the latter imposed an interdict on the entire land of that lord. When it was questioned whether he had acted correctly, the Pope responded: "Since all laws and all rights permit everyone to repel force with force, it was certainly permissible for the dean himself (if the aforementioned bailiff had presumptuously unjustly deprived him of his worldly goods) to defend himself against that violence. And since, against his excessive power, sufficient temporal defense might not have been available to him, he could also defend himself spiritually, by using the ecclesiastical sword." Therefore, the Pope clearly declares that the dean could lawfully defend his own goods with temporal force or arms against the violence of the bailiff, saying that it is permitted to everyone to repel force with force. It is proven in 2 ways by reason: because such an irregularity is not incurred either through fault, nor through a lack of leniency; not through fault, because there is no guilt present, as even the adversaries concede; nor through a lack of leniency, for, as will be said below in number 464, at the end, irregularity is not incurred through a lack of leniency except for killing or mutilation, which is done either by public officials, or by soldiers in a just offensive war, or by clerics while healing, with burning or incision, as stated in number 385. On the contrary, it is the common opinion of the Doctors, from the chapter "Is qui," in the *Extra*, book 6, as we saw in number 345, that no irregularity is incurred unless it is expressly stated in the law; therefore, since in the law, irregularity through a lack of leniency is incurred only in the aforementioned three cases, there should be no extension to the case we are discussing; much more so, be-

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cause in those cases, killing is committed spontaneously, although without guilt, but in our case, killing does not come from a spontaneous will, but from the necessity of defending one's rights; therefore, such a killing (as Suarès rightly says) has more the nature of defense than of killing. It is answered to the opposing text in the chapter "Suscepimus," that a monk exceeded the bounds of justice while defending himself, when he, together with a companion, bound thieves, when he could have let them go free without danger to persons or property. Furthermore, it is noted there...

[*Latin ed. p. 461*]

The Glossa states that a monk who killed thieves was not acting under any necessity; for he could have fled before they were released from their bonds, since the goods were either already secured or he could have taken them with him; therefore, that defense was not moderate. 390. — Finally, it must be considered how such an irregularity, incurred through homicide, can be removed. It can be removed I. through Baptism, as is gathered from the decree "Si quis," Dist. 50. See Salm. de cens. c. 8, p. 4, n. 45, and others throughout. II. Through a dispensation from the Pope, who can indeed grant a dispensation in every irregularity, even in the case of voluntary homicide, and Barbosa, who vehemently denies this and calls it reckless, affirms this in Alleg. 39, n. 63. Nor does the text in c. Minor, Ead., Dist. 50, where it seems to be asserted that even the Pope cannot grant a dispensation in an irregularity contracted through homicide, present an obstacle; for the Doctors commonly say (see Salm., loc. cit., in fin.) that it cannot be done, which should be understood as meaning that it is not fitting, as is clear from the same text. 394. — However, Bishops, if the homicide was voluntary, cannot in any way grant a dispensation from the irregularity, even if it was concealed, as is stated in c. Liceat, 6, sess. 24, Trident. In this council, Bishops can grant a dispensation in every irregularity, except for that which arises from voluntary homicide. The only exception is when there is a danger to the soul, or another very serious reason, and there is no access to the Pope, as commonly taught by Sylv. v. dispensatio, n. 41, and Salm., ibid., n. 46, in fin., with Machado, Avila, Corn. Dian., Henr., etc. 392. — However, Cov., Abbas, Castro, Texeda, Bannez, Donat., Miranda, etc., apud Cont. Spor., in Suppl., p. 149, n. 466, and Dian. believes it is probable, p. 42, in fin. libri, n. 6, p. 97, art. 2, with Ang. Vivald., etc., and Viva de cens., q. 8, art. 2, n. 7, with others, that if the homicide is so concealed that it cannot in any way be proven in court, then Bishops can rightly grant a dispensation from the irregularity incurred through it. But this opinion, in my view, is not proven by any valid reason, and therefore it is rightly rejected by Salm., dict., n. 46, Renzi de cens., t. 2, q. 10, and Ronc., c. 3, q. 4. The reason is that Bishops have no power over irregularities, except for the power that is granted to them by the Trident council in c. Liceat, 6, sess. 24, and since the inferior cannot act against the

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law of the superior, according to can. Inferior, Dist. 21, and Clement. Ne Romani, de elect. But the council expressly grants to Bishops the power to grant dispensations for all irregularities arising from a hidden offense, but expressly excludes those that arise from voluntary homicide. It is not valid to say that the council is speaking of that homicide which, although hidden, can still be proven in court. For first, it is gratuitously assumed. Second, the same council elsewhere in sess. 14, c. 7, expressly declares the opposite, saying: "Whoever, of his own will, commits homicide, even if that crime cannot be proven by the judicial process..."

[*Latin ed. p. 462*]

Then, if the homicide has not been committed through some other means, but secretly, he cannot be admitted to the sacred orders at any time. 393. — However, if the homicide was accidental, it is very likely that Bishops can grant a dispensation from the irregularity resulting from it, when the crime was concealed, because the Council in d. c. states that it does not allow Bishops to grant a dispensation, only if the homicide was voluntary, distinguishing it from an accidental one; thus, commonly, Pal. d. 6. p. 45. §. 7. n. 7. Bon. q. 4. p. ult. n. 5. Cont. Tourn. part. 3. cap. 1. art. 3. concl. 3. Ronc. c. 3. q. 3. in fine. Diana p. 9. tr. 7. r. 21. et Salm. de cens. c. 8. p. 3. n. 43. cum Less. Sayr. Corn. etc. Therefore, it can be inferred that a Bishop can certainly grant a dispensation in the following cases: I. when someone ordered a servant to strike, but the servant accidentally killed him, as in Cont. Tourn. l. o. and Bon. n. 8. cum Suar. Moll. Fill. etc. II. when someone intending to strike lightly, accidentally causes death through negligence, Bonac. n. 7. III. when someone striking a pregnant woman, accidentally causes an abortion, Cont. Tourn. l. c. IV. when a cleric, while practicing surgery, accidentally causes someone's death through inexperience or negligence, Dian. p. 9. t. 7. r. 22. Less. et Avil. Furthermore, it is commonly taught by Nav. c. 27. n. 240. Laym. l. 3. tr. 3. p. 3. c. 12. n. 3. cum Sylv. Sayr. et Henr. Barb. ali. 39. n. 62. cum Mirand. Campan. Homob. etc. and Diana p. 9. tr. 7. r. 22. cum Less. Avila, and others, that Bishops can grant a dispensation from the irregularity resulting from accidental homicide, even if it is known, for the reception of minor orders and simple benefices; because Bishops could do this by ancient right, as taught by Abbas, Hostiens, Jo. Andr. and others, cited in Laym. l. c. and Barb. n. 59. However, the Council of Trent only reserved the irregularity resulting from voluntary homicide, not from accidental homicide that is public. It remains to be seen whether a Bishop can grant a dispensation in the case of accidental homicide for the reception of a canonry? See the statements in a similar case, n. 429. 394. — But it is doubtful whether homicide committed in a sudden quarrel should be considered accidental? The first opinion affirms this, and this is held by Diana loc. cit. and Salm. de cens. c. 8. p. 4. n. 6. cum Machad. Philib. Henr. Rodr. etc. The reason

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is that voluntary homicide is properly that which is committed through industry and through treachery, as stated in Trid. c. 7. sess. 14: "Even he who has killed his neighbor through industry and through treachery must be removed from the altar." The second opinion, however, which is more probable, denies this, and this is held by Suar. d. 44. sect. 1. n. 3. Nav. c. 27. n. 240. Holzm. p. 444. n. 335. Con. p. 488. n. 2. Spor. t. 2. p. 148. n. 251. and 252. Tamb. c. 45. §. 6. n. 5. and Diana (retracting herself) p. 40. tr. 44. r. 49. cum Hurt. etc. The reason is that Trid. l. c. after the words mentioned above, "Even he who has killed his neighbor through industry, etc.," immediately adds: "He who has committed homicide with his own will... cannot be promoted at any time." If, however, the homicide was not committed with premeditation...

[*Latin ed. p. 463*]

It is narrated that [the homicide] was committed, either by chance, or in repelling force with force; in such a case, some sort of dispensation seems to be due. But he who kills in a quarrel, already kills with his own will and with premeditation, even if he is provoked by unexpected anger, since he commits homicide which he intends. Nor do the aforementioned words concerning industry and deceit stand in the way; for the Glossa on chapter 4, concerning homicide, explains "per industriam" to mean "not by chance"; and the same Council declares that it is understood when someone kills with his own will and with premeditation, to distinguish it from a homicide committed by chance, as it speaks of in the second part, 395. — However, it is very likely that if someone incurs irregularity because of a concealed homicide committed in self-defense, he may be dispensed by the Bishop, if he has exceeded the bounds of justifiable defense, because, since such a homicide does not arise from an absolute will to kill, it cannot be said to be absolutely voluntary, as the Council of Trent states; thus, commonly, Navarrus, chapter 27, number 239 (where he states that St. Pius V. held this opinion). Suarez, d. 46, section 1, number 13. Layman, book 3, section 5, treatise 3, page 3, chapter 43, number 2. Palafox, d. 6, page 45, paragraph 8, number 10. Controversiae, part 3, chapter 1, article 3, conclusion 3. See Hincmar, Diana, page 10, treatise 44, reply 49. Croize, book 7, number 476, with the common opinion of Bonaventure, question 4, page last, number 9, with Sayr. Valois, Molinos, Corradi, Henry, and Avila. 396. — Regular prelates, however, can dispense their subjects from irregularities arising from a concealed, accidental homicide, as taught by Salm, de censuris, chapter 8, page 3, number 43, by virtue of the privilege of St. Pius V. (related at length by the same Salm, treatise 6, on penance, chapter 43, page 3, number 33). Even if the crime is public, as say Diana, Villalobos, Sayr, etc., see Salm, de censuris, cited, number 43, at the end; and even if it is voluntary, Salm defends, book 1, chapter 1, page 1, number 47, and chapter 7, page 4, number 59, with Peyrin, Portel, Bannier, etc., by

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virtue of the concession of Martin V, Paul III, and Sixtus IV, where it was granted to regular prelates to dispense on the first day of Lent, from irregularities, whatever the occasion or cause may be. But despite this concession, I believe that regular prelates cannot dispense, when the homicide is public, or voluntary, because in a general concession, those things are not included which it is likely that the superior would not have conceded, as commonly taught by Suarez, d. 21, section 3, number 3. Bonaventure, question 3, page 1, number 42, and Salm, ibid., chapter 2, page 4, number 44, with Ugoluc, Candida, and others, as is evident from chapter In generali, rule 81, on rules of absolution, 6. Furthermore, Benedict XIII (as we saw, number 104) expressly declared that only the General of the Order can dispense (from irregularities arising from voluntary homicide), provided that it has not been reported, and has been consummated within the cloister. Therefore, even if that concession, made to all regular prelates, were true, it seems to have been entirely revoked, or limited to the General, by Benedict. As for secular confessors, they—

[*Latin ed. p. 464*]

They can dispense in every irregularity in which Bishops can deal with their subjects, by virtue of the privileges of Sixtus IV and Julius II, as we noted in number 335. Therefore, they can properly dispense with laymen who have contracted an irregularity due to mutilation, or due to a secretly committed accidental homicide, just as Bishops can deal with their subjects, as we have seen in numbers 384 and 393.

DOUBT V. What irregularities arise from a defect?

397 The first arises from a defect of the soul. Therefore, the following are irregular: 1. The insane, 2. The demoniacs, 3. The epileptics.

398 This concerns the insane more specifically.

399 This concerns the epileptics and the demoniacs.

400 Who can dispense in this irregularity? And can Bishops dispense in any irregularity arising from a defect? At least in a doubtful case? Can regular prelates?

401 II. Those who are uneducated are irregular.

402 III. Neophytes.

403 The second arises from a defect of the body; either because the defect hinders the exercise of the order, or because it brings about a deformity.

404 And first, due to the hindrance of the exercise, the following are irregular: 1. The blind.

405 II. The deaf.

406 III. The mute.

407 IV. The lame.

408 V. He who lacks a hand or all fingers, or the thumb, or the index

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finger.

409 VI. He who suffers from fever, paralysis, etc., or is afflicted with other infirmities.

410 Second, due to a deformity, the following are irregular: 1. He who lacks a member, namely the nose or an eye. What if the ears are lacking?

411 II. The leper.

412 III. The monstrous, namely the hunchback, the dwarf, the black-amoor.

Note 1. What if the defect arises after ordination?

Note 2. What if it precedes ordination?

414 Who can dispense in this irregularity? Can the Pope dispense with a blind man? Can regular prelates?

415 What if the bodily defect arose from one's own fault? And can a Bishop dispense in that case?

416 What about the eunuch?

417 What if someone gave a reason for the amputation of his genitals?

418 What if someone amputated his testicles in order to preserve his chastity?

419 And what if someone only intended to kill himself, etc.?

420 The third arises from a defect at birth.

421 Illegitimate children are legitimized: 1. By subsequent marriage.

422 Does it suffice that the marriage could have been entered into at the time of birth?

Note 1. What if the marriage is entered into after the son has been ordained?

Note 2. What if the marriage is not consummated?

424 Note 3. What if the marriage is null, but is unknown at least to one party?

425 Note 4. What if children are born from a clandestine marriage due to omitted announcements?

426 II. Children are legitimized by religious profession.

427 III. By pontifical dispensation.

428 A Bishop can dispense with an illegitimate person for the minor orders and for a simple benefice.

Doubt 1. Can he dispense for the reception of canonical degrees?

Doubt 2. Can he dispense for an illegitimate person who is concealing his condition?

[*Latin ed. p. 465*]

451. Question 3. Can someone be admitted to the sacred orders even if they are irregular?

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452. Question 4. Are exposed children irregular?

453. Secular princes can only legitimize for secular purposes. In cases of doubt, can anyone be considered legitimate?

454. The fourth impediment arises from the defect of the mother.

455. The fifth impediment arises from the defect of the sacrament, that is, from bigamy.

456. Bigamy is threefold: true, interpretative, and figurative.

457. I. What is true bigamy?

458. II. What is interpretative bigamy? This occurs in four ways. The first way is when someone takes a widow.

459. Question 1. What if they believe the woman to be a virgin?

460. Question 2. What if the marriage is contracted invalidly?

461. The second way is when someone takes a woman who has been corrupted by another.

462. Question 1. What if the adultery has been concealed?

463. Question 2. What if they become aware of the adultery unknowingly?

464. The third way is when someone has relations with an adulterous wife.

465. Question 1. What if both marriages are invalid?

466. Question 2. What if it is done in good faith?

467. Question 3. What if the second marriage is entered into deceitfully?

468. III. What is figurative bigamy?

469. Do clerics in the sacred orders also incur this irregularity?

470. How is the irregularity arising from bigamy removed? Can the Pope dispense with it?

471. Can the Bishops?

472. Can it be removed regarding the minor orders, and for simple benefices? Regarding figurative bigamy?

473. Can regular prelates dispense with their subjects in all cases of bigamy?

474. The sixth impediment arises from a defect of reputation.

475. The seventh impediment arises from a defect of liberty. Hence, the following are irregular:

476. I. Servants.

477. II. Married persons.

478. III. Courtiers.

479. IV. Soldiers, and public officials, and those engaged in cruel or shameful activities.

480. The eighth impediment arises from a defect of gentleness.

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481. Is someone irregular who kills in defense of honor? (See also statement no. 389.)

482. The following become irregular due to this defect:

483. I. Those who kill in war; but when?

484. Question 1. Those who incite others to kill in war?

485. II. Those who participate in a trial leading to death or mutilation. In what manner?

486. I. If they cooperate.

487. II. Actively.

488. III. Effectively. Do clerics who attend an execution sin?

489. IV. Proximately. Does a confessor, or another consulted by the judge, sin by answering that someone in particular should be chosen?

490. Who can be excused? Are all those who do not participate as ministers in the proof or execution of the cause excused?

491. V. By an action that is naturally suited to that purpose.

492. How is it forbidden for clerics and monks to become involved in a case of bloodshed?

493. The following become irregular:

494. I. Judges.

495. II. Voluntary witnesses.

496. III. Accusers, etc. What if a cleric is an accuser? And what if the cause is their own, or someone else's?

497. Can a Bishop dispense with this irregularity if it is concealed? Can regular prelates?

498. The following are noted: the faculties that the Holy Penitentiary possesses regarding cases, censures, irregularities, incapacities, vows, etc. 397. — ANSWER: The first arises from a defect of the soul, from which the following are irregular:

499. I. The insane, the phrenetic, the apoplectic, and the epileptic; but they...

[*Latin ed. p. 466*]

If they are ordained, and have not suffered from this illness within a year, they are presumed to be cured, and are permitted to exercise their office. However, if they suffer from it rarely, and indeed without convulsions or foaming at the mouth, they are permitted to celebrate Mass with a coadjutor, who, in their absence, will offer the sacrifice. *M. Leo, p. 372, from c. Illud 7, q. 4. Glossa, ibid., 398.*

Speaking of those afflicted with madness, it must be distinguished whether the person suffering from this defect has already been ordained. If so, then, provided the defect ceases for a prolonged period, according to

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the judgment of the Bishop (or prelate, if he is a regular canon), he will be able to minister in the order he has received; thus, *Nav. c. 27, n. 203. Suar. d. 51, sect. 1, n. 4 and 5, with Sylv. Gratian, and S. Anton. Bon. d. 7, q. 4, p. 4, n. 4. Pal. d. 6, p. 10, n. 4. Croix, l. 7, n. 494. Cont. Tourn., part. 2, cap. 2, n. 4, and Salm. de cens., c. 9, p. 7, n. 79, with Avila, Pelliz., etc.*

If, however, he has not been ordained, he will never be able to receive orders if his madness has arisen from a permanent and habitual cause, founded (as Suar. says) on a lesion of the organs or humors, because those who suffer from such conditions are easily prone to relapse into the same illness, as stated in c. Maritum 2, dist. 33, where it is said: "No one should be ordained who has ever been subject to fits of rage." Therefore, it is sufficient that one has experienced a fit, because such a person is rarely considered to be perfectly cured.

However, if the madness arises from an accident, such as a fever, a wound, anger, or another transient passion, and afterwards truly ceases, then, according to *Suar. l. c., n. 5. Nav. c. 27, n. 203. Ronc. c. ult., q. 7. Croix, l. c., and Bon. p. 2, n. 23, with Mol. Fill. Ugol. Avila, etc., commonly.*

The same applies to those afflicted with epilepsy (or lunacy) and those possessed by demons; for if the illness precedes ordination, these individuals are perpetually irregular: thus, *Suar. d. 51, sect. 1, n. 6. Bon. d. 7, qu. 2, p. 2, n. 22. Croix, l. 7, n. 495. Ronc. c. ult., qu. 7, and others, commonly.*

And it is clear from the entire distinction 33, and especially from c. Communiter, where it is said: "Commonly, we define that no one who is either seized by demons or is subjected to any kind of vexation should dare to minister, or be admitted; except those who, being subject to bodily infirmities, without such passions, are proven to be free in this regard: that is (as the Glossa explains) those who fall rarely."

Cabass. T. J. l. 5, c. 49, n. 8, and Cont. Tourn. l. c., n. 3, state that if someone was afflicted with this illness before puberty, and afterwards is completely cured, he is not considered irregular, because (as Hippocrates says) epilepsy is often perfectly cured during puberty. Otherwise, if the illness occurs after puberty; and especially after the age of 25.

However, Croix d. n. 495 states that in his region, those who have been free from this infirmity for two years are ordained, with the declaration of the Bishop; indeed, without a declaration, if someone is proven to be free for seven years.

If someone who suffers from this illness has already been ordained, even if he is not entirely cured, if he falls rarely (that is, once a month), and does not foam at the mouth,

[*Latin ed. p. 467*]

It should be known that [a priest] may privately celebrate the Mass, accompanied by a priest who is fasting, when the disease is approaching;

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thus, Suarez, d. n. 6; Croix, loc. cit.; Navar, and Laym, and Bonaventure, n. 22, with St. Antoninus; Sayr, Ugol, etc. And it is clear from c. Communiter, where it is stated: "Those who are [epileptic], and those who are [obsessed], shall remain suspended from the exercise of their office and place, as long as, within the space of one year, they are not found to have been freed from the assault of the demon by the discretion of the Bishop." However, that space of one year, Suarez, n. 5, states, is not in common use, but is left to the prudent judgment [of the Bishop]. Mazzola, vol. 4, p. 446, with Sayr, Ugol, and others, notes that if someone simulates demonic possession, this person is also irregular for receiving orders, according to the Council of Constance, canon 6. However, Suarez, and Fillon state that the Bishop can promote a demoniac to the lower orders, because in c. Cler. 4, dict. 33, the words refer only to the sacred order; but it is more probable that others commonly deny this; see below, n. 452, 400. In this irregularity, due to a defect of the soul, during its effect, not even the Pope can grant a dispensation, because those who are afflicted with it are, by divine law, incapable both of receiving and exercising the order. However, if the defect ceases, and ceases before ordination, the Bishop cannot grant a dispensation in this matter, because no dispensation is granted to Bishops in irregularities arising from defects, except in two cases, as Cabass notes, l. 5, c. 49, n. 3, namely: 4. They can grant a dispensation for the birth of illegitimate children for the lower orders alone, and for a simple benefice, according to c. 4, de fill. presb. in 6, and 2. They can do the same with a bigamist, according to custom, as taught by St. Thomas, Sylv., Azor, the Roman Rota, and others, in Cabass, loc. cit., against Cont. Tourn., de irreg., part 3, cap. ult., with Pont., etc.; but see n. 452. Furthermore, Pagani, in c. Veniens, de fill. presb., n. 7 and 8, and Cont. Tourn., with Gib., and others, state that Bishops can grant dispensations in all doubtful irregularities, arguing from cap. Nuper 29, where it is said that whatever is not reserved is permitted; but since reservation is odious, it is not considered to have been made, where the impediment, or irregularity, is not certain. Therefore, to remove a certain irregularity contracted from a defect of the soul, the dispensation of the Pope is required, as taught by Bon., p. 2, n. 23; Pal., d. 6, p. 40, n. 5; Salm., de cens., c. 9, p. 7, n. 8; and Suarez, d. 54, s. 4, n. 5, against Majol. and Tab., in Bon. However, regular prelates can well grant dispensations to their subjects who suffer from such a defect, so that they may be promoted to the sacred orders, even if someone has suffered from permanent dementia, if, according to the judgment of doctors, the danger of that condition has truly ceased, because to regular prelates, by a concession, it has been granted to dispense with all irregularities, except for some, as we have said, n. 355, among which this is not included; Salm., dict., n. 80, according to what is said by them, c. 7, p. 4, n. 59, 404.

"II. The uneducated, who do not have the necessary instruction for Or-

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ders." (But whether all the uneducated are irregular, both for...)

[*Latin ed. p. 468*]

Orders to be considered: which are those to be avoided? See the statements in book 6, number 79; see also book 5, question 2, question 3.) 402. — "III. Neophytes, or those recently converted, must, until the judgment of the Bishop, be sufficiently instructed." (However, Toletus, in Vivam de cens. q. 9, a. 4, n. 14, states that after ten years, a neophyte is no longer considered irregular, and even sooner, if the Bishop judges that he has made good progress in morals.) 403. "Secondly, due to a defect of the body: 1. If, because of it, he is unfit for the exercise of the order, such as if he is blind, deaf, or lame, to the extent that he cannot go to the altar without assistance; likewise, if he lacks a hand, thumb, index finger, or eye (however, not if he lacks the thumbnail of the thumb or index finger, or only the right eye; but if he lacks the left eye, or the canon, or the power of sight of either eye, he requires a dispensation; which, however, Valen, Henr. Sayr. deny, if he can read the canon without deformity with his right eye). 2. If he cannot exercise the order without horror, offense, or scandal to others, such as if he lacks ears, a nose, if he is noticeably hunchbacked, leprous, or paralytic; if he has superfluous limbs with great deformity; in cases of doubt, as to whether the deformity is sufficient, it is for the Bishop to judge, at least in the case of clerics; for in the case of regulars, it pertains to their prelate, as Suar. and others teach, citing Diana p. 4, t. 2, r. 63. They allow that the Bishop may reject the judgment of the prelate; but that the latter, if he enjoys authority as a bishop, may grant a dispensation in that irregularity, unless the deformity is so great as to cause scandal, ibid., citing Rodr. and others 4. See Bonac. Laym. M. Leo p. 3, f. 370. Therefore, it is resolved: 1. He does not seem to be irregular: 1. Who has six fingers, or some joined together, if it is not a great deformity, and he can exercise the order. 2. Who has a spot in his eye that does not impair vision, nor noticeably deform. 3. Who lacks the thumbnail of the thumb, if he can elevate and break the Host. 4. Who has become an eunuch through force, or infirmity. 2. He is irregular who is a hermaphrodite, because he is monstrous; a giant is not irregular, nor is a dwarf, nor a black man; however, this applies to strangers, where the difference is a source of ridicule." 404. — "It is necessary to discuss each of these matters more fully. Irregularity arises from a defect of the body, either because it impedes the proper exercise of the order, or because it brings about a noticeable indecency or horror; thus, commonly, the Doctors, with D. Th. Suppl. q. 39, n. 6. Therefore, first, it is irregular due to an impediment to the exercise of the order: 1. A blind man, who lacks sight altogether, according to c. ult. dist. 55. But it should be noted: 1. that if someone is already a priest, and it is certain that he cannot err, he can obtain a dispensation from the Pope; see the statements in book 6, number 390. Note: 2. If someone lacks the sight of the right eye, he is not irregular,

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as is commonly held; otherwise, if..."

[*Latin ed. p. 469*]

Our doctors, as is most commonly taught. See Suarez, d. 54, s. 2, n. 45; Layman, l. 4, tr. 6, p. 5, c. 7, n. 2; Roncaglia, q. 6, r. 2; Croix, l. 7, n. 500; Controversiae Tournhemenses, part 2, cap. 3, concl. 3; and Salm, de censuris, c. 9, p. 6, n. 68, with Navarret, Fillon, etc. It is excepted, unless the right eye is suited for reading the canon without great deformity, which can easily occur through the accommodation of the Missal, by bringing it to the center, as Layman states, l. c.; Tamburrini, de irregularitatibus, c. 8, §. 4, n. 2; Diana, p. 3, tr. 6, r. 22; and Croix, l. 7, n. 500, with Navarret, Molinet, Salazar, Avila, Dicast, etc. Suarez, l. c., practically demonstrates that this is probable, even to the point that one might be promoted to the priesthood. Note 3. If one is not entirely blind, but is so deficient in sight that he cannot read in the Missal, he is also irregular for receiving Holy Orders. However, whether he is irregular for being ordained is to be seen in l. 6, n. 390. Note 4. He is not irregular who is weak of sight, so that he needs spectacles, or who sees obliquely (commonly called cross-eyed); thus, Holzbauer, t. 4, p. 449, n. 364; Controversiae Tournhemenses, loc. cit.; Mazzola, t. 4, p. 456; and Tamburrini, §. 4, n. 3, with Sayr, Fillion, Menochio, and others. 405. — II. A deaf person, who from both ears does not hear at all, as is most commonly taught by Bona, qu. 2, p. 2, n. 7; Controversiae Tournhemenses, ibid.; Roncaglia, qu. 6, r. 2; Croix, l. 7, n. 502; Elbing, t. 2, p. 477, n. 248; Mazzola, p. 456; and Tamburrini, c. 8, §. 4, n. 5, with Suarez, Turrecremata, Paleario, d. 6, p. 44, n. 3, with Layman and Sayr, from canon 77 of the Decrees, where this is defined, because such a priest, not being able to hear the voice of the minister, cannot celebrate without indecency. Henry and Gobius deny this, as seen in Croix, l. c., because (as they say) it is sufficient that the priest perceives from other signs that the minister has responded; but most doctors (as we have said) contradict them. Bona, l. c.; Tamburrini, n. 6; Concilii, p. 496, n. 5; Paleario, d. n. 3, with Navarret and Layman, and Salm, c. 9, de censuris, n. 67, with Concilii and Pellizzari, concede that if deafness occurs after the reception of Holy Orders, it does not prevent the priest from celebrating; for a defect that occurs after ordination is more easily tolerated than one that occurs during ordination, as is said of the blind, l. 6, n. 390. Most doctors, however, teach against Comitola, as seen in Croix, n. 502, that a deaf person, or one who hears with difficulty, is very irregular; thus, Holzbauer, p. 446, n. 363; Tamburrini, l. c.; and Croix, ibid., with Suarez, Bona, Sayr, Regius, Fillion, Diana, Graff, etc. 496. — III. A mute person, who cannot speak, or utter complete words, so that he cannot pronounce any word without omitting something, as seen in Controversiae Tournhemenses, loc. cit.; Holzbauer, p. 449, n. 363; Viva, qu. 9, ar. 4, n. 45; or only with great difficulty, as Salm states, cit. n. 67. And Holzbauer says the same, l. c., concerning one who has a completely interrupted speech.

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However, those who stammer or are missing teeth are not irregular, even if they utter words with some difficulty, as Croix states, l. 6, p. 2, n. 2222.

[*Latin ed. p. 470*]

Unless there is a cause for concern, or it involves contempt; *Nav.* c. 27, n. 222a, and *Tamb.* §. 4, n. 40, with *Con. Sayr. Fill. Prep.* etc. 407. — IV. A person who is lame and cannot walk to the altar without a crutch, as stated in c. *Nullus Episcopus* 57, regarding consecration, dist. 4. However, this is understood as explained in the *Glossa* there, v. "With a crutch," that is, "if he cannot be sustained at the altar without it"; and the same is said by *Bon.* qu. 2, p. 2, n. 45, and *Pal.* d. 6, p. 44, n. 3. Furthermore, a lame person who does not require a crutch is not irregular, as stated in c. *Si quis* 49, dist. 55. Nor is one who has twisted legs, as *Cont. Tourn.* de irreg. part. 2, cap. 3, concl. 3, *Salm.* de cens. c. 9, p. 6, n. 68, and *Croia* n. 504, with *Pal. Laym.* and *Henr.* state, because such a defect can easily be concealed by clothing; unless there is a significant deformity. However, if someone has a wooden leg, because they have a mutilated or withered foot, they are irregular; thus, *Laym.* o. 7, n. 4, *Nav.* c. 27, n. 199, *Cont. Tourn.* in the aforementioned place, *Tamb.* §. 4, n. 47, *Bon.* n. 43, with *Mol. Sayr. Ugol. Fill. Reg.* etc., because celebrating with a wooden leg involves great indecency. However, *Tamb.* in the aforementioned place, with *Sylv. Rosel. Majol.* and *Gibal.*, states that if such a defect is minor, and the indecency can somehow be remedied, the celebration may be permitted. And in cases of doubt, the judgment of the Bishop should be followed. 408. — V. One who lacks a hand, or all fingers, or the thumb, as stated in c. *ult.* regarding a defective body. The same is stated with *Bus.* as above, *Renzit.* 2, p. 674, qu. 3, *Tamb.* §. 4, n. 42, *Fill.* c. 6, n. 432, *Bon.* p. 2, n. 45, with *Suar. Mol. Sayr. Avil. Reg.* and others, regarding one who lacks the index finger, or a part of the thumb or index finger, or who has them so weak that he cannot elevate the host, or break it. However, if someone lacks only the thumbnail or the fingernail of the index finger, as stated in the aforementioned c. *ult.* If someone has already been ordained, and has a restricted thumb, in a case of necessity, he may probably administer the Eucharist with the remaining fingers, as we stated in l. 6, n. 244. If someone lacks three of the fingers on the hand, he is also irregular; *Anacl.* p. 545, n. 48, and *Cont. Tourn.* p. 39, with *Sayr.* and *Ugol.* If, however, he lacks only one of the smaller fingers, he is not irregular, as *Holz.* p. 420, n. 364, and *Cont. Tourn.* p. 39, with *Caj.* state. And *Cont. Tourn.* agrees with another author, if he lacks two. Nor is it irregular if he has extra fingers; *Holz.* l. c., *Cont. Tourn.* in the aforementioned place, *Fill.* n. 175, and *Bon.* n. 44, with *Ugol. Henr. Sayr. Reg.* etc., provided that the sixth finger does not impede the use of the others. That sixth finger can be cut off without danger of irregularity, if it can be done without endangering life; *Bon.* l. c., with the aforementioned. However, *Cont. Tourn.* in the aforementioned place,

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notes that if someone lacks the index finger, he may obtain a dispensation. 409. — VI. One suffering from a continuous fever, but not a quartan or mild fever; or who suffers from severe headache; *Bon.* d. 7, q. 2, p. 4, n. 47. However, this is to be understood regarding one who cannot celebrate due to such an illness without a near risk of failing, or of making notable errors, as...

[*Latin ed. p. 471*]

I. It is likewise stated by Bon. n. 18; for the best rule on this matter is given by Laym. c. 1. n. 6. According to Soto, Tollet, Avila, and others, any illness does not cause irregularity, unless it either impedes the performance of the duties of the Order, or brings about a notable scandal or indecency. Also, one is irregular who suffers from paralysis, as stated by Bus, Pal. n. 3, and Conc. p. 496. n. 4. It is rightly said that this applies only to one who has such trembling hands that there is a danger of spilling the chalice. Also, one who suffers from a cough to such a degree that there is a danger when receiving the Eucharist is irregular; Bon. p. 1. n. 24, with Ugol, Majol, etc., commonly. Also, an abstemious person who cannot drink wine without the danger of vomiting is irregular; Cont. Tourn. loc. cit. etc. In this case, he would be irregular by divine law; nor can the Pope grant a dispensation to celebrate the sacred rite in one species only, as we have said in l. 6. n. 496, 440.

II. Secondly, irregularity arises from a defect of the body, when a bodily defect causes great deformity or horror, as is stated in c. Presbyterum, concerning sick clerics, and elsewhere concerning bodily defects. Therefore, those who are lacking a member are irregular, namely, those who lack a nose, as stated in c. penult. de corp. vit., or who have a very deformed nose, namely, one that is very distorted, or very low, or prominent, as stated by Tamb. c. 8. §. 1. n. 49, Bon. p. 4. n. 2, and Viva q. 9. art. 4. n. 45. Also, if one has had an eye removed, either the right or the left, as stated in c. ult. dist. 55, it is probably said by Sylv. ap. Croiæ l. 7. n. 500, in fine, Cont. Tourn. ibid., with Pontas, Roncag. q. 6. r. 2, with Tamb. and others, that such a person is not irregular, if that deformity can be remedied by a glass eye. Similarly, one who lacks ears is irregular, unless such a defect is covered by hair or otherwise, as stated by Bus, Salm. de cenæ. c. 9. p. 6. n. 68, Tamb. §. 1. n. 8, Renzi t. 2. p. 670. qu. 2, Dian. p. 4. tr. 2. r. 75, Pal. d. 6. p. 14. n. 3, with Laym. and Bonac., and Cont. Tourn. with Con. Avila and Pontas, 441.

III. Lepers, as stated in c. Tua nos, concerning sick clerics, where it is forbidden for a leper to celebrate, for fear of scandal and abomination to the people; therefore, if there were no scandal, as in a private place, he could rightly celebrate; thus, Pal. de Euch. p. 43. n. 5, Salm. eod. tit. c. 7. p. 4. n. 56, in fin., and Bon. de irreg. d. 7. q. 2. p. 1. n. 20, with Mol., Ugol., and Majol. Similarly, those who have lips that are corroded, or cut off, are irregular, like lepers; Tamb. §. 2. n. 44, Cont. Tourn., Viva qu. 9. art. 4. n.

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45. The same is said by Cont. Tourn. part. 2. cap. 3. v. Concerning diseases, and Holzm. p. 449. n. 363, concerning one who suffers from the French disease, which appears externally; or who has a face that is very disfigured by another disease, as stated by Laym. c. 7. n. 1, 442.

IV. Monstrous persons, namely, those who have a very large hump, namely (as taught by Anacl. 545. n. 32, Renzi p. 671. q. 4, and Bon. p. 4. n. 9, with Avila, Mol., Ugol., Reg., and others), if the hump is joined with great deformity or weakness, as if he could not stand upright.

[*Latin ed. p. 472*]

Furthermore, individuals with dwarfism, or those of very short stature, may elicit laughter, especially if they possess a disproportionately large head, as noted by Tamborini, § 4, no. 2; Cont. Tourn. l. c., cited above; and Renzi, p. 672, q. 5, with Sayr Majol, Henr., and others; or, as Layman states in his Index, under "Irregularis," those who are so short in stature that they cannot extend their arms, which is necessary for the service at the altar. Also, Ethiopians, who may cause laughter, as mentioned by Cont. Tourn. in the aforementioned passage, and Ugolini, de irr. c. 50, no. 4. Although Majol and Gavant deny this, as cited by Tamborini, § 4, no. 24. However, a dusky or reddish complexion does not disqualify one from serving at the altar, as Ugolini, Fill., c. 6, no. 171, and Tamborini, no. 22, state, along with Majol. Furthermore, hermaphrodites, even if the male sex predominates, as stated by Suarez, d. 54, s. 2, no. 2; Layman, c. 7, no. 4; Navar, c. 27, no. 203; and Bonaventure, p. 4, no. 45. However, Toldeo, l. 4, c. 63, no. 6, and Escobar, l. 53, no. 209, along with Cornaro, (contra Conc. p. 497, no. 5) argue that this defect constitutes an irregularity only when it is known, and not when it is concealed.

443. It should be noted that if any of these physical defects arise after the reception of Holy Orders, the priest is not prevented from performing those acts of his order that he can exercise without impropriety or indecency, as a blind or lame priest can well hear confessions, read the Gospel, etc., as stated in c. 7, de cler. agrot., where it is added: "However, we do not forbid him from performing the other sacerdotal offices to the slightest degree." Note 2: If such a defect occurs before the reception of Holy Orders, it absolutely constitutes an irregularity, not only with respect to that order whose exercise it impedes, but with respect to all other orders, as commonly taught by Navar, c. 27, no. 200; Bonaventure, p. 4, no. 58; Escobar, l. 53, no. 216; Paludanus, p. 40, no. 4; Salmeron, de cens. c. 9, p. 6, no. 72, at the end, along with Cornaro, Pellican, and Cabassut, l. 5, c. 49, no. 15, along with Anglerius, Ugolini, and Avila, against Paludanus and others. The reason is that, since all orders pertain to the priesthood, one who is excluded from the priesthood is also considered excluded from all orders.

444. In this irregularity arising from a defect, only the Pope can grant

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a dispensation, for example, to ordain a blind man; and it is reported by Fillol, Henr., and Majol, cited by Tamborini, c. 8, § 3, no. 2, that a certain Pope granted a dispensation to a blind man to celebrate Mass with the assistance of a skilled helper. Furthermore, the Sacred Congregation, as reported by Pereira, Adn. ad Croix, l. 7, no. 500, judged that a dispensation could be granted to a blind man, even one blind in both eyes, who is already a priest, to celebrate Mass with the assistance of another priest. However, if the person is a layperson, it is not advisable to consult the Pope for a dispensation for the First Tonsure, nor even for the reception of a benefice, according to the same author. Tamborini also believes that the Pope can grant a dispensation for the priesthood to someone who lacks hands, so that he can at least hear confessions and give sermons, etc. However, Avila, de cens. p. 7, d. 3, rightly denies this, because the power over the mystical body is founded on the power over the real body of Christ; therefore, one who is inept for the first [order] is incapable of the second.

[*Latin ed. p. 473*]

Bishops, however, can grant dispensations in such irregularities, while regular superiors cannot (as we stated in n. 400). Only the Bishop can declare or judge, whether a bodily defect notably impedes the exercise of Holy Orders, or whether it brings about a great indecency, as commonly taught by Suar. d. 51. s. 2. n. 16, with Nav. and Sylv. Laym. c. 7. num. 7, Dian. p. 4. tr. 2. r. 73, with Miranda and others, from c. 2. de corp. vit. Can regular superiors judge this matter with respect to their subjects? Barb. denies this in all. 42. n. ult., and Dian. p. 2. tr. 6. r. 61, with Rodr. Henr. and Camp. But Bus. strongly affirms this, as above in n. 402, Suar. l. c., Laym. n. 6, Salm. de cens. c. 9. p. 6. n. 68, in fin., with Avill. and Pell., and D.ana l. c. r. 73, with Peyr. Miranda, and Avila. The reason is that regular superiors, with respect to their subjects, have episcopal jurisdiction, to which such a judgment pertains more than to the character itself. Suar. rightly states that the Bishop ordaining can admit or reject such a candidate. 445. — What has been said pertains to those who suffer from a bodily defect without their own fault; if, however, the defect arises from their own fault, for example, if someone amputated a limb, or part of it, with a wicked intention, then that person becomes irregular, even if the defect does not impede the exercise of Holy Orders, nor does it bring about a deformity, because this irregularity is imposed as a punishment for cruelty towards oneself, as is declared in c. Qui partem 6. dist. 55, as we stated in n. 365, in fin., that he is irregular who, of his own will, amputates any part of a finger. However, to incur this irregularity, a grave fault is required, as Tamb. rightly states in c. 8. §. 2. n. 3; otherwise, such a punishment would not have due proportion to the fault. Others require that such a crime be notorious, as Suar. d. 51. sect. 1. n. 8, Bon. q. 2. p. 2, and others, apud Tamb. n. 8. But it is truer to deny this, as Pal. d. 6. p. 12. n. 2, Salm. l. c. n. 71, with Garc. and Tamb. l.

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c., with Sayr. and Mol., because such an irregularity does not depend on the notoriety of the fault, but on the crime of cruelty, which one exercises against oneself. However, Tamb. rightly states in n. 9, that the Bishop, from c. Liceat 6. Tridentini sess. 24, can grant a dispensation to him, even if the crime is hidden, even if the defect of the limb is evident, for the Council universally grants Bishops the power to dispense in all irregularities arising from a hidden fault. 446. — What should be said about a eunuch? Answer: He who is a eunuch because of the amputation of the testicles, or the viriles, performed by doctors for the sake of a disease, or before the use of reason, or because of the injury of another, is not irregular, as commonly stated by Salmant. de cens. c. 9. n. 70, in fin., and Tamb. §. 2. n. 11, and this is also evident from cap. Si quis à medicis 7, and cap. 8 and 9, dist. 55. It is ridiculous (says Nav. cap. 27. n. 200) that some believe it necessary that the testicles be...

[*Latin ed. p. 474*]

He who wishes to be ordained, or to celebrate [Mass], must have his testicles; on the contrary, he who, out of anger or undiscerning zeal for chastity, mutilates himself by removing his testicles or penis, is certainly irregular, as is stated in c. Si quis, 4. dist., 55. where it is said: "If anyone mutilates himself, that is, if he amputates his testicles, he shall not become a cleric." And in c. Hi qui, 5, of the same distribution, it is said: "Those who, not knowing how to resist carnal vice, mutilate themselves, cannot attain the clergy." Also, in c. Si quis, 7, of the same, it is said, "None of those who intend this thing should be promoted, and they should not dare to mutilate themselves." And the Doctors commonly teach the same regarding one who, for the same motives, allows himself to be mutilated by another, as Tamb. n. 43 and Salm. ibid. n. 69 state. This is inferred from c. Si quis, 9, dist., 55, 447. – "But what if someone gives a reason for such mutilation, but without his own consent, as when someone, by approaching a married woman, gives reason for her husband to have his testicles removed?" Suarez, d. 54, s. 2, n. 8, and Bon., q. 2, p. 2, n. 33, hold this person to be irregular. But it is very probable that Tolet, l. 1, c. 82, Tamb., §. 2, n. 25, Conc., d. 48, d. 43, n. 408, Gibal, c. 3, q. 4, Hurt., diff. 14, n. 52, and Pal., p. 42, n. 3, with Garcia, etc., deny this. The reason is that (as has often been said), for irregularity to be incurred, it must be expressed in the law; but nowhere is it stated that he who gave a reason for the mutilation, and who was mutilated without his own consent, is irregular: for the words in c. 5, as mentioned above, refer to those who intend the act, and signify (as is clear to everyone) the desire or pursuit; but he who desires adultery, even if he foresees the mutilation, does not desire or pursue it. 448. – Furthermore, Pal., d., p. 42, n. 44, states, and it is considered probable by Tamb., §. 2, n. 46, and Pelliz., ap. Salm., de cens., c. 9, p. 6, n. 70 (who seem to adhere to this opinion), contrary to Suarez, Mol., and Sayr., ap. Dian., p. 40, tr. 43, r.

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44, that if someone amputates his testicles, or has them amputated for the sake of preserving his virginity, he is not irregular, since he does not do so out of indignation, or undiscerning zeal for chastity, as is required to incur this irregularity, as stated in d. c. Qui part 6 and c. Si quis, 9, dist., 55. All the more so, since the aforementioned texts only speak of one who mutilates himself by removing his testicles, and not his testicles. 449. – Also, Tamb., d., §. 2, n. 48 and 49, rightly states that if someone attempts to kill himself, or to mutilate himself, he is not irregular; for that is what is intended in the aforementioned c. Hi qui, 5, which refers to the consent and effect of the attempted act, as is clear from the context. However, the same Tamb., n. 20, with Cornejo, states that if someone were to publicly attempt to kill himself, he would incur irregularity due to infamy. 450. – "Thirdly, from the lack of legitimate birth, from which illegitimate children are irregular, because they are considered inferior in origin." (Thus, from c. 1, and the end of fill. presbyt.). And this is so even if they are hidden, as commonly taught by Bon., d. 7, qu. 2, p. 3, Pal., d. 6, p. 9, n. 2.

[*Latin ed. p. 475*]

and Salm. ibid. p. 4. n. 43. with Avila, Sayr, Pelliz, and Cornejo. 421. — Such children are, by common law, legitimized I. By a subsequent marriage between their parents, provided that they were able to validly contract marriage at the time of conception. (Therefore, if a woman, having a dead husband, takes another woman as her spouse, from whom she has a child, that child will remain illegitimate, according to c. Tanta, concerning the children who are legitimate.) 422. — However, it is very probable that Sanch. de matr. l. 8. d. 7. n. 19. Pont. ibid. tit. c. 3. n. 2. Anacl. p. 546. n. 33. Bonac. p. 3. n. 5. and Salm. ibid. n. 47., with Sayr, Pelliz, Diana, and Corn. against Suar. d. 50. s. 1. n. 3. Cont. Tourn. de Irreg. part. 3. cap. 1. concl. 2. Not. 2., it suffices to legitimize the offspring, and to render it immune from the defect of birth, if the marriage could have been contracted at the time of birth, as is gathered from d. c. Tanta, concerning the children who are legitimate, where it is said that the offspring is illegitimate, if a man, while his wife lives, knows another woman, and conceives offspring from her. For the conception of offspring is more truly accomplished not by conception, but by birth: at least there the Pontiff certainly speaks of a son already born, when he says that he should be excluded from inheritance: therefore, since the opposite is at least doubtful by the law, it is not considered that an irregularity has been imposed in that case, which (as has been repeatedly stated) is not incurred unless it is expressly stated in the law. And most recently, Benedict XIV. illustrated this opinion with a most extensive dissertation in the form of a letter in his Bull, addressed to the Archbishop of St. Dominic in the island of Hispaniola, and thus revealed his opinion on this matter in §. 3: In this very difficult controversy, when texts are found to be contrary to texts, when doctors oppose doctors, if it were up to us to

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pass judgment, we would do so no otherwise than according to the opinion received in the courts and tribunals of that region, in which it would have to be pronounced. In §. 4. he proceeds to another doubt, which he resolves as follows: But when it is certain that a marriage was validly contracted between the parents of that child, and it is uncertain as to the time at which the child was conceived and born, we would consider this child to be legitimate, since the judge, in doubt, must be inclined towards the good and the benefit of the offspring. With these premises, I argue as follows for the first opinion. Therefore, if the judge must judge in favor of the offspring when there is doubt, and no judicial decision has been found in such a case, and we are in doubt due to the discrepancy of texts and doctors, then the offspring should be judged to be legitimate, rather than illegitimate, since in this case also it is certain that it was born in the stability of marriage, and it is uncertain whether the time of conception should be considered, or rather the birth. 423. — Furthermore, it should be noted here, with Salm. de cens. c. 9. p. 4. n. 49. that if a natural son was initiated into the sacred orders before the marriage of his parents, he may lawfully minister in those orders, and advance to higher orders without dispensation: because, although he may have sinned by receiving the orders, he has nevertheless not incurred any harm from this crime of irregularity: ancient.

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However, the irregularity is already removed by a subsequent marriage. Note 2: Such legitimization occurs through a subsequent marriage, even if it is contracted hastily, for example, if it is contracted at the point of death, because, according to the aforementioned canon, the virtue of legitimizing is granted to anyone by a valid marriage. 424. — Note 3: Children born from an irregular marriage, due to some hidden impediment, yet considered valid, at least by one of the spouses, are considered legitimate; thus, generally, Suarez, d. 50, s. 4, n. 6; Bonaventure, q. 2, p. 3, n. 5; Council of Trent, Sess. XXIV, c. 6, n. 6, and Contra Tournhem, loc. cit., n. 3, in medium, with Pontanus, and it is clear from canon "Cum inter." 2, which states: "If the children are legitimate, when their parents are known to have publicly and without contradiction entered into marriage with each other before the Church... we declare that their children are to be considered legitimate." And this is confirmed in canon "Ex tenore," ibid. On the other hand, if both parents were in bad faith at the time of the marriage, as is stated in chapter "Cum inhibitio" 3, §: "If anyone, secretly and presumptuously, enters into marriage there, even unknowingly: In the same way, offspring born from an illegitimate union are considered illegitimate, if both parents, knowing the impediment, presumptuously entered into marriage, even in the presence of the Church, contrary to all prohibition. And so, Suarez, in the aforementioned passage, n. 44, teaches that children born before a marriage invalidly contracted are illegitimate, even if both parents believed

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it to be valid, because for these, no text is found that approves them as legitimate. 425. — Note 4: Children born from a clandestine marriage, that is, without announcements and without the permission of the Bishop, are considered illegitimate, even if the parents acted in good faith due to ignorance, as is stated in the aforementioned §: "If anyone, as mentioned above in the aforementioned canon 3, says: 'If anyone presumptuously enters into a clandestine or prohibited marriage (that is, without proclamations, as explained earlier in the text), even unknowingly, the offspring of such a union are entirely illegitimate.' However, Suarez, d. 50, s. 4, n. 4, limits this, for the sake of conscience, if the parents have used due diligence; but Bossius, de contr. matr., c. 8, n. 52, does not admit this limitation, because the legitimization of children from marriage is not a benefit granted by law, but the law denies it to the children of parents who entered into marriage contrary to the prohibition of the Church, as is stated in the aforementioned text, and is confirmed in chapter "Cum inter," with the aforementioned words: "publicly and without contradiction before the Church." 426. — "II. Children are legitimized by a religious profession, which is necessary for those who aspire to dignities, even in religion, such as an abbey or a priory, etc., and cannot be promoted without a dispensation. See above, d. 3." (Thus, from the bull of Gregory XIII and Salmeron, de cens., c. 9, p. 4, n. 55. Although other regular prelates can, from other privileges, grant dispensations in cases of irregularity with their illegitimate subjects, as is shown by Salmeron, ibid., n. 56, 57, and 58. See also the aforementioned n. 355.)

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427. — III. By pontifical dispensation. "The Pope can not only grant dispensation to illegitimate individuals, but also the very legitimization, which removes the irregularity with regard to all effects. See *Comm. Sanch de matr.*, book 8, chapter 4, number 28; *Pal.*, page 9, number 6; and *Salmant.*, ibid., number 50, with *Azor, Suar.*, and *Corn.*"

428. — "The bishop, however, can only grant dispensation to illegitimate individuals for the Minor Orders and for a simple benefice, according to chapters 4 and 2 of the decree *De filiis presbyterorum* in book 6. He can also grant dispensation for canonries in collegiate churches, or for incomplete portions in cathedrals, or for other benefices to which the sacred order is not attached. He cannot, however, grant dispensation for a curacy, as is stated in chapter *Is qui de fil. presbyt.* in book 6. This is certain among all."

429. — "But in doubt 4, can the bishop grant dispensation for the reception of a canonry in cathedrals? Some affirm, such as *Pontas, verb. Dispensare irreg.*, cause 28; and *Cont. Tourn.*, book, chapter, number 5, at the end; and *Gibert, Oltrado,* etc., because (as they say) every canonry is, in itself, a simple benefice, and although the Council of Trent, in session

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24, canon 42, requires the sacred order for canonries in cathedrals, nevertheless it does not require it here and now, since a cleric can receive a canonry in a minor church, and then obtain dispensation from the irregularity within a year, which the Council grants for the reception of the sacred order. It is more probable that others deny this, as stated in *Pal.*, book 6, page 9, number 8; *Less.*, book 2, chapter 34, number 66; *Barb.*, all, 45, number 24; *Conc.*, volume 10, page 497, number 7; and *Salm.*, *de cens.*, chapter 9, page 4, numbers 51 and 52, with *Corn., Henr., Avila,* and *Philib.*, *Ratio,* because, although a canonry may be, in itself, a simple benefice, nevertheless, according to the decree of the Council, it is attached to the sacred order; hence, it requires the sacred order immediately; and although someone may receive it within a year, this is a concession from Trent, but this changes the nature of the thing very little."

430. — "In doubt 2, can the bishop grant dispensation in this irregularity to an illegitimate individual who is concealing it? Some affirm, as stated in *Dian.*, page 4, treatise 45, reply 24; and *Avila, Barbos, Pellez, Reg., Peyrin,* etc., according to *Salm.*, *dict.*, number 52, who call it probable; because (as they say) Trent granted to bishops the power to grant dispensation in irregularities arising from a concealed fault (other than homicide), without distinguishing whether the fault was one's own or another's."

"But it is truer to deny this, as stated in *Laym.*, book 2, treatise 5, page 3, number 2; *Suar.*, book 50, section 5, number 5; *Bon.*, question 2, page 3, at the end; *Cont. Tourn.*, book, chapter, number 2; *Dian.* (retracting himself), page 4, treatise 2, reply 64; *Pal.*, page 9, number 40, with *Hurt.* and *Salm.*, ibid., number 53, with *Con., Corn.* and *Philip.*, *Ratio,* because this irregularity is properly not from a fault, but from a defect; and it is truer to say that it is from a fault, when it is understood to be a fault of one's own, not of another's."

431. — "In doubt 3, can the bishop grant dispensation to an illegitimate individual who is concealing it, with regard to administering the sacraments in the Major Orders that he has received? The first opinion, which is held by *Laym.*, book 4, treatise 5, page 5, number 2; *Pal.*, page 9, number 40; and *Dian.*, page 4, treatise 2, reply 64, affirms absolutely, if the initiate..."

[*Latin ed. p. 478*]

If he has received Holy Orders in good faith, because he has already acquired the right to minister; indeed, even if in bad faith, it is considered probable that the Bishop can dispense for him, and this is argued in the decree *Nisi cum prudenter*, and it is stated that a dispensation can be granted to one who has culpably received Holy Orders with a hidden impediment. The second opinion, which is the truer one, universally denies this, and this is held by Suarez, *d. 5*, *s. 5*, *n. 4*; Fulgentius, *tr. 49*, *c. 5*, *n. 455*; and Salmeron, *de cens.*, *c. 9*, *p. 4*, *n. 54*, with Cornejo. And

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it is proven from the decree *de fl.*, *presbyt.*, *in 6*, where it is absolutely stated that Bishops cannot grant a dispensation in cases of irregularity arising from a defect of birth, except for the Minor Orders; therefore, since an illegitimate person is incapable of exercising the Major Orders, he cannot acquire any right to them. But what is stated in the cited text, namely, that even with one who has acted culpably, a dispensation can be granted, is certain, but it is not stated that it is granted by the Bishop; therefore, it must be understood to be granted by one who has the power, namely, the Pope.

432. — Doubt 4. Are exposed children, whose parents are unknown, to be considered illegitimate and irregular? The first opinion affirms this, and this is held by Contenson, *Tourn.*, *de irreg.*, *part. 2*, *cap. 1*, *concl. 1*, *v.*; Quæres 3; Fulgentius, *tr. 49*, *n. 141*; and Bonaventure, *q. 2*, *p. 3*, *n. 40*, with Avila, Ugoluc, Regale, Garcilaso, etc., because there are strong conjectures that they are illegitimate, since legitimate children are not usually exposed. The second opinion, however, is more probable and denies this, and this is held by Palafox, *p. 9*, *n. 2*; Pontius, *de matr.*, *l. 2*, *c. 6*, *n. 4*; and Salmeron, *vid.*, *n. 44*, with Con, Gibellinus, Diana, and Pellizzari, and Suarez considers it probable, *d. 50*, *sect. 4*, *n. 5*. The reason is that, in order to incur this irregularity, it is required that one be certain of his own illegitimacy; but exposed children are dubiously illegitimate, since often parents, even married ones, expose their children because of poverty. This opinion is given great weight by the decree of Gregory XIV, issued in the year 4591, which the aforementioned authors cite, where the Pope declared, for the benefit of the Fraternity for exposed children, that they are not to be considered illegitimate unless they are proven to be so. Gibellinus, in Contenson, *Tourn.*, *l. o.*, although he is in favor of this opinion, says that this declaration does not sufficiently prove it, because it was made for the benefit of the Fraternity; but it seems to me to prove it sufficiently, because it was rather issued for the benefit of the exposed children than of the Fraternity. At least, it must be said that such an irregularity in an exposed child is not sufficiently expressed in the law.

433. — "Secular princes, however, cannot legitimize, except in matters relating to secular offices and inheritances. Furthermore, when it is doubtful whether someone is legitimate, he is not to be considered irregular, contrary to Vasquez and others," as Diana states, *p. 4*, *t. 2*, *r. 59*, etc., Avila, because everyone is presumed to be legitimate until the contrary is proven; nor is one to believe the mother herself in this matter, even at the end of her life, unless reason dictates otherwise.

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434. — "The fourth [impediment] arises from the defect of age, concerning which see in the Sacrament of Holy Orders." (See the aforementioned passages, book 6, number 783, and number 799.)

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435. — "The fifth arises from a defect in the sacrament, or in the signification of marriage, due to bigamy, because bigamy does not perfectly represent the union of Christ with the Church, since He divided His flesh among many wives. However, bigamy is not sufficient for this impediment if one merely makes betrothals with several persons, or if there is secular cohabitation; nor is fornication, or adultery, or a valid marriage with several persons sufficient. Rather, it requires a true, or presumed, marriage with two persons, and consummation." (As stated in chapter 5, concerning the duty regarding bigamy, number 7.) "I said, or presumed; because, although sometimes a second marriage is null, nevertheless, by the fiction and interpretation of the law, bigamy is presumed, although the term is improperly used. Therefore, the following cases are irregular: 1. He who, while his first wife is living, or after her death and with her known, takes a second wife, even if the marriage is invalid. 2. He who takes a widow who is not a virgin, and knows this. 3. He who takes a wife who has been corrupted by another, even through fornication, and knows this, unless he himself corrupted her beforehand, because then there is no division of the flesh among many. 4. He who knows his own wife after she has been known by another through adultery, because she has already divided the flesh among many. It does not matter if she was violated by force, or if the man did not know that the woman was corrupted, or was a widow; because this irregularity does not arise from fault, but from a defect in the signification of the sacrament. 5. He who, after a solemn vow of chastity, contracts a marriage, and consummates it, even with a virgin, because, by the interpretation of the law, it is considered that he has contracted two marriages, one spiritual with Christ, and the other carnal with a woman. It does not matter that he contracts it invalidly; because, as far as the matter is concerned, the effect is considered to be present."

436. — "Therefore, the fifth irregularity arises from a defect in the sacrament, namely, from bigamy, as is clear from the entire section concerning bigamists. This is derived from the Apostle's words in 1 Timothy 3: 'An overseer must be a man of one wife.' It is called a defect in the sacrament because he who has taken two wives cannot properly signify the union of Christ with His unique Church, which is His bride. Bigamy is threefold: true, interpretative, and figurative. True bigamy is when one has truly contracted marriage successively with two persons, as stated in canon 10 of the fifth dist., and in the canon concerning the duty regarding bigamy. However, both marriages must be consummated (and consummation, according to the aforementioned passages on marriage, number 4075; nor does Sanchez, book 7, decretal 93, number 6, prove otherwise, along with others, from the canon concerning the duty regarding bigamy, where...")

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It is expressly requested that bigamy be avoided in marriage, which is

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consummated by the union of bodies, because otherwise, a husband is not said to divide his flesh with more than one person, except through consummated intercourse, whereby two become one flesh, as commonly stated by Sanchez de Matrimonio, book 7, chapter 83, paragraph 4; by Bonaventure, book 7, question 2, paragraph 5, paragraph 2; by Palencia, book 6, paragraph 8, paragraph 2; by Salmeron, on censures, chapter 9, paragraph 3, paragraph 25, and others throughout.

II. Interpretive bigamy is incurred by one who, by the interpretation of the law, or by some fiction, is considered to have had two wives, even though he has not actually had two. This bigamy occurs in four ways, as taught by St. Thomas in the Supplement, question 66, article 4. The first way is when one takes a widow who is already known, even if he does so invalidly, as is clear from the canon "A nobis," last, on bigamy. She is said to be known, because otherwise, it would be different if the first husband did not know her, as stated in the canon "Debitum," in the same title.

The second way is when one takes a woman who has been corrupted by another, as commonly stated by St. Thomas in the aforementioned passage; by Sanchez, book 7, chapter 54, paragraph 7; by Palencia, book 8, paragraph 4; by Salmeron, on censures, chapter 9, paragraph 3, paragraph 29, and others. And it is clear from the last canon of the fifth distinction, where it is stated that certain husbands of corrupted women are irregular, and from the canon "Curandum," in the thirty-fourth distinction, where Pope Hilary stated: "Let no one aspire to the sacred orders who has taken a wife who is not a virgin." Otherwise, if one were to take a woman who had been corrupted by him previously, as commonly stated by St. Thomas in the aforementioned passage, article 3, ad 2, and by Salmeron, ibid., paragraph 32, with Sanchez, Palencia, and Tolet.

But here, a doubt arises: 4. Does one become irregular who takes a corrupted woman, believing in good faith that she is a virgin? Some, such as Sanchez Ledesma, and others apud Sanchez, de Matrimonio, book 7, chapter 84, paragraph 45, deny this, because this irregularity is incurred by one's own act; therefore, it requires an intentional and voluntary action. However, St. Thomas in the Supplement, question 66, article 3, ad 3, and others commonly and more truly affirm this, including Sanchez, number 8; Suarez, book 45, section 3, paragraph 45; Layman, chapter 6, paragraph 3; Cont. Tourn., part 2, chapter 7; the Council, volume 10, page 498, number 44; Barbos, all. 49, number 9; Palencia, book 8, paragraph 6, with Navar, Abbot of Avila, and Garcia, and Salmeron, ibid., number 30, with Soto, Sayr, Henry, and Corn. Ratio, because this irregularity is not from sin, but from a defect in signification; therefore, good faith does not prevent the husband's flesh from being divided with a corrupted woman, even if she is believed to be a virgin.

Doubt 2. Is one irregular who, with a corrupted woman, enters into an

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invalid marriage due to some impediment? The first opinion, which we follow, affirms this, and this is held by Suarez, book 49, section 3, paragraph 3, with Richer and the common opinion, as asserted by Cont. Tourn., in the aforementioned passage, and by Covar and Corn. apud Salmeron, chapter 9, paragraph 34. And they prove this from the canon "A nobis," last, on bigamy, where it is stated that a certain deacon is irregular who takes a widow, even if there was no marriage with the corrupted woman. The second opinion, however, denies this, and this is held by Sanchez, de Matrimonio, book 7, chapter 84, paragraph 44; by Palencia, book 8, paragraph 4; by Navar, chapter 27, paragraph 495, and by Salmeron, in the aforementioned passage, paragraph 34, with Valentia, Corn, Henry, Diana, and Pollis, where Farinac testifies.

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Thus, it was decided by the Sacred Congregation. The reason (as they say) is that in the aforementioned text, mention is made of two marriages contracted, one spiritual, namely, the sacred ordination, by which a deacon is joined to the Church; the other, carnal, albeit invalid, and therefore, that deacon is declared irregular, not because he contracted marriage with the *vidua* [Culmore], but because of a figurative bigamy, as will be explained in paragraph 448.

However, it is responded that in the cited text, that man is not called irregular because he contracted two marriages; indeed, he was not the husband of the *vidua*, since the marriage was invalid, but because, with him, it is not permitted to act as if he were the husband of the *vidua*, not because of a defect in the sacrament, but because of the affect of intention with the action performed. Therefore, the Pope did not consider (insofar as the reason for irregularity is concerned) the spiritual marriage contracted with him in the sacred ordination, for this irregularity arises, even if someone ordained in the priesthood takes a virgin. This is as we demonstrate in paragraph 448. But he declared him irregular, as if he were the husband of the *vidua*, because of the affect of intention; therefore, it does not matter that the marriage is null.

441. — A third way of incurring irregularity due to interpretative bigamy is when someone knows his wife after she has committed adultery, according to c. Si cujus 14 and c. Si laici 12, dist. 34, and thus, commonly, Sanchez, lib. 7, decret. 84, no. 45; Suarez, de div. leg., disp. 49, sect. 3, no. 46; Palatinus, part. 8, no. 6; Salmeron, de cens., cap. 9, p. 3, no. 33; and Barbatus, alloc. 49, no. 8, and others. The reason is that a man who knows his wife, who has been known by another, acts as if he considered her to be corrupted.

442. — But a doubt arises: Whether such a man becomes irregular if the adultery has been concealed? Herinex and others deny this, according to Elbel, de irreg., p. 485, no. 260, because (as they say) in the aforementioned canon, Si cujus, it is said: If it has been evidently proven that

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(the wife) has committed adultery. However, Contenson, Tournhem, in the cited place, Elbel, loc. cit., with the common opinion, as asserted by Bonaventure, quaest. 2, p. 5, no. 5, with Suarez, Ugolini, and Fillippo, maintain this, and so do others, even if the woman has been oppressed by force. The reason is that this irregularity does not arise from fault, but from a defect in signification: and although this adulteress is not a true adulteress, nevertheless, she truly shared her body with another, if she had intercourse, as is required. However, Elbel, loc. cit., calls the first opinion more probable, because the words mentioned above, if it has been evidently proven that adultery has been committed, seem to exclude concealed adultery; but notwithstanding this, the first opinion seems more agreeable to me.

443. — A second doubt: Whether one becomes irregular who, unaware of his wife's adultery, knows her? The Gloss in c. 2, de Bigam., v. In bigamis, ao Reb. Lop. Sa. Led. etc., denies this, according to Sanchez, decret. 84, no. 45. Because (as they say) he who knows his wife, whom he does not know to have been known by another, does not know her in a rational way, and therefore, he is not said to know an adulteress. But commonly and more truly, Palatinus, part. 7, no. 6; Bonaventure, p. 5, no. 5; Busenbaum, in sum., and Sanchez, loc. cit., with Navarrus, Soto, Toletus, Bellarmine, Paludanus, Covarrubias, and countless others, affirm this.

[*Latin ed. p. 482*]

The reason is that, as we have said, this irregularity, arising from bigamy, is not due to a fault, but to a defect in the sacrament, which does not require guilt.

444. — The fourth way of incurring irregularity due to interpretative bigamy is when someone contracts and consummates two marriages, one valid, the other invalid. There is no explicit text for this irregularity, but the Doctors commonly deduce it from *Nuper, de bigamis*, where the matter is discussed concerning a cleric who contracted marriage before receiving Holy Orders, and then, already ordained, entered into another marriage; and he is considered a bigamist, not because of a defect in the sacrament, since the second marriage is invalid, but because of the intention to have two marriages with intercourse; thus, D. Th. Suppl. q. 66, art. 2; Tolet. l. 4, c. 26, n. 4; Salm. de cens. c. 9, p. 3, n. 26, with Corn. and Led. and Sanch. d. 84, n. 3, in the middle, with Soto, S. Antonin, Palud, Bellarmine, Valent.

445. — However, it is doubted: 1. Whether someone who has contracted two marriages is irregular, both of them invalid? The Doctors deny this (Dian. p. 4, tr. 2, r. 38; Avila, Conin, and Henr. apud Salm. ibid. n. 28), who consider it probable. The reason is that, as they say, this case is not explicitly stated in the law. But it is more probable that S. Th. Suppl. q. 66, art. 2; Suar. d. 49, s. 2, n. 41; Bon. p. 5, n. 2; Pal. p. 8, num. 10; Cont. Tourn. l. c., Quest. 3; Conc. p. 498, n. 44; Salm. dict. n. 28, with Suar., Corn., and Sayr., and

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Sanch. l. 7, d. 84, n. 3, with S. Antonin, Palud, Soto, Tolet, Bellarmine, Sa., Valent, Led, Lop, and others commonly affirm. And it is proven from *A nobis, de bigam.*, cited n. 440, where (as we have seen) that deacon who took a widow as his wife was declared irregular, not because of a defect in the sacrament, but because of the intention. Therefore, the intention alone induces irregularity.

446. — Doubt 2. Whether someone who contracted two marriages without good faith incurs irregularity? Sanch. d. dist. 84, n. 6, with Archid. Astens. and Bellarmina, denies this, because he is considered irregular not due to a fault, but due to a defect, since in *Nuper, de bigam.*, he who had previously had a wife, and who, after being constituted in the Holy Orders, contracted another marriage, was declared irregular, not because of a defect in the sacrament, but because of the intention; therefore, he was punished for the crime of intention; therefore, when there is no crime, there is no irregularity. But it is commonly and more probably affirmed by Sylv. verb. Bigamia, q. 7; Angel. ibid. verb. n. 9; also, Jo. Andr. Ancharan, Abb. Henr., etc., apud Sanch. l. c., at the end. The reason is that in the aforementioned text, the crime of intention is not considered, but the intention to have a second marriage. This is expressly confirmed by *A nobis, de bigam.*, as we have seen, n. 440.

447. — Doubt 3. Whether someone incurs irregularity who falsely contracts a second marriage, only to obtain intercourse? Pal. p. 8, n. 7; Dian. p. 4, tr. 2, r. 38; also, Avila, and Hurt. apud deny this.

[*Latin ed. p. 483*]

Salm. on impediments, chap. 9, p. 3, no. 27: "Because at that time, the marital affection, which is required in the aforementioned chapter, is lacking. Recently, the words 'Propter affectum intentionis' (due to the intention) are used. However, it is more probable, as affirmed by Suar. d. 49, s. 2, no. 10; Tourn. p. 64, q. 3; and Salm. in the same place, with Corn., that the aforementioned affection is not required for two marriages to be truly contracted, but it suffices for two marriages to be outwardly entered into." The same reasoning appears to apply to the case of a man who contracts marriage with a woman who has been violated, believing her to be a virgin, as mentioned in no. 439. And likewise, in the case of a man who unknowingly fulfills his duty with an adulteress, whether she is hidden or has been violently oppressed, as stated in nos. 442, 443, and 448.

III. Finally, a spiritual marriage is that which is contracted with a woman who has made a solemn vow in a religious order, or after the reception of Holy Orders, even if the marriage is invalid. In such cases, the parties are similar to those contracting a second marriage, inasmuch as, after having begun a spiritual union with Christ, they turn away from Him and attempt to contract marriage, as commonly taught by DD. Suar. d. 49, s. 3, nos. 2 and 6; Anacl. p. 547, no. 42; Sanch. l. 7, d. 85, no. 5; Salm. in the same place,

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no. 36, and others throughout, from chap. 23 and chap. Monacho 32, 27, q. 4. Provided that such a marriage has been consummated, as the Doctors commonly teach, and as is stated in the aforementioned chap. Monacho, where it says: "If he has been joined to a wife afterwards."

IV. However, Hurt and Tanner, quoted by Salm. in the same place, as well as the Abbot, Hostiens, and Archid., quoted by Suar. d. 49, s. 5, no. 4 (who, improbably, consider this to be probable), are to be heard with less weight, stating that this impediment is incurred only by professed monks. However, the Doctors commonly teach that it is incurred even by clerics who have been ordained, as also stated by Suar. no. 8; Salm. in the same place, no. 36, in the footnote; Anacl. d. no. 42; Nav. c. 27, no. 195; Tol. lib. 4, c. 26, no. 7; and Sanch. d. 85, no. 5, with Sa, Valent., Graff., Led., Gabr., Philiarch., and many others. This is clearly demonstrated in chap. 1, which states that the Bishop can grant a dispensation to a deacon, after he has performed his penance, to receive the order to minister, who has taken a wife; therefore, that deacon is already considered irregular. Furthermore, in chap. 2 of the same title, it is stated that the Bishop does not allow a subdeacon who has contracted marriage to minister. Although, therefore (says Sanch.), such a cleric would not be irregular due to a spiritual marriage, he nevertheless incurs an impediment due to the offense. Sanch. rightly rejects, in nos. 44 and 47, the opinion of those who say that someone becomes irregular who contracts marriage after having made a simple vow of chastity, because this is not expressed in any law. Similarly, for the same reason, a layperson is not irregular who marries a professed nun, because the laws speak only of the person who contracts marriage after having made their own vow; Sanch. no. 42, and Salm. on impediments, chap. 9, p. 3, no. 36, with Sayr., Corn., and Henr.

[*Latin ed. p. 484*]

450. — Here, one inquires how this irregularity may be removed. I say 1st, that this irregularity is not removed by baptism, as commonly taught by St. Thomas, *Summa Theologica*, question 66, article 4; by Suarez, *Disputationes*, 49, section 5, number 40; by Sanchez, *Doctor Iuris*, 7, chapter 83, number 9; and by Salmeron, *Tractatus de Matrimonio*, number 37, with Cornelius Pellican and others. It seems expressed in the canon, "If anyone should take a widow," chapter 15, distinct 34. I say 2nd, that the Pope can rightly dispense in this matter; and although in the canons concerning bigamists it is said, "It is not permitted to dispense with bigamists," this must be understood without a grave cause, as taught by Sanchez, *Doctor Iuris*, 7, chapter 86, number 6; by the Council, page 499, number 44; and by Salmeron, *Tractatus de Matrimonio*, number 38, with Sayr and Cornelius, also in *Controversiae Tournenses*, part 2, chapter 7. It is inquired, 1st, whether, with common consent, Lucius III dispensed in this way, as evidenced by a gloss on chapter 18, distinct 34. It is objected that it can

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be said that this irregularity was instituted by St. Paul, as mentioned in number 436. To this, it is answered that the constitutions of the Apostles, precisely as such, do not transcend human law, in which the Pope has all power.

454. — However, a bishop, if the bigamy is true or interpretative, can in no way dispense in this matter, neither for receiving the sacred orders, nor for administering in those orders, nor for receiving benefits attached to those orders, as commonly taught by St. Thomas, *Supplementum*, question 66, article 5; and by Salmeron, *Tractatus de Matrimonio*, number 39, with others. This is evident from the canon, "Concerning bigamists." It is objected that the text in the cited canon, where it is said that Pope Martin declared that a bishop can dispense with a bigamist to become a subdeacon, does not constitute an objection. To this, Suarez, *Disputationes*, 46, section 6, number 5, and *Controversiae Tournenses*, in the cited place, respond. It is inquired, 2nd, whether Gratian erred in asserting that the aforementioned canon was of Pope Martin, since many authorities hold that Martin of Braga was the collector of many canons from various particular councils. But, even if it were of Pope Martin, since in the entire title concerning bigamists, bishops are forbidden from dispensing in bigamy, it seems certain that this canon has been abrogated. Furthermore, Salmeron, *Tractatus de Matrimonio*, number 39, says that, at the time of Pope Martin, the subdiaconate was not yet a sacred order.

452. — But it is asked, whether a bishop can dispense with a bigamist concerning the lesser orders, and the reception of simple benefices? Some affirm this, as taught by St. Thomas, *Summa Theologica*, 4, distinct 27, question 3, article 3; by Navar, *Tractatus*, chapter 27, number 497; by Sanchez, *Doctor Iuris*, 7, chapter 86, number 44; by the Council, page 599, number 44; also by Paludanus, Azorinus, Avila, Comitatus, and others, apud Paludanus, 6, page 8, number 47. And Suarez, *Disputationes*, 49, section 6, number 5, considers it probable. The reason is that those initiated into the lesser orders are not irrevocably bound to divine service, and therefore, it is said that bishops can grant such a dispensation. But it is more truly denied by Suarez, *Disputationes*, in the cited place; by *Controversiae Tournenses*, in the cited place; by Layman, chapter 6, near the end; by Barbatus, all 48, number 25; by Bonaventure, *Doctor Ecclesiasticus*, 7, page 5, number 45; and by Paludanus, number 48, with Garcia, from a decree of the Sacred Congregation. This is proven from the Tridentine Council, session 23, canon 47, where it is forbidden to admit bigamists to the ministrations of the lesser orders; and from the canon, "Unus de bigamis," in 6, where bigamists are deprived of all clerical privileges; but it is more clearly proven from the decree, "Si quis."

[*Latin ed. p. 485*]

Vapulus, *Fagnan*, book 4, chapter on bigamy, at the end, states that

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the Pontiff suspended a certain Bishop because he conferred a benefice upon a bigamist and was ordained into penalties for the wicked act. Opponents scarcely prove that Bishops have such authority. However, Bishops can grant dispensations in cases of bigamy, even for the reception of holy orders and the exercise of ministry, as taught by Tolet, book 4, chapter 26, conclusion 6; Salmeron, *de censuris*, chapter 9, page 3, number 44; Suarez, number 48; Sanchez, number 20; Cont. Tournhem, *loco citato*, part 3; and Palafox, number 49, along with Garcia and others. This is proven from chapter 4 of the Council of Trent, *de clericis*, and chapter 4, *Qui clericos vel votivos*. And this applies (as noted by Salmeron, *dictio* number 44, at the end, with Cornaro and Henricus) even if the crime is public, since this irregularity arises from a defect, not from a sin. However, Cont. Tournhem rightly makes an exception if such a cleric takes a widow, or a prostitute, or if he was married to a woman before ordination.

453. Regular prelates, by the privilege of Sixtus IV, can grant dispensations to their subjects in all cases of bigamy. Furthermore, by the privilege of Paul III (mentioned by Salmeron, *op. cit.*, chapter 7, page 4, number 59), they are granted the power to grant dispensations to their subjects in all irregularities, bigamy not excepted, as Palafox states, page 8, number 21, and Salmeron, *de censuris*, chapter 9, page 3, number 42, along with Pellizzari, Henricus, Machada, Leander, etc.

454. "Infamy, whether of the law (which arises either from one's own sin, or from the sin of parents, or from a base condition of the person), or of fact, arises when the crime is public; it does not arise from a hidden crime, except for homicide and the violation of vows, as taught by Navar, *Conscientia Laymensi contra Sylvestrum*, and Suarez, who hold that infamy can also arise from a hidden crime, provided that it is connected with infamy by law. Furthermore, infamy arising from a notorious crime, or contracted by a sentence of a judge, is not removed except by a dispensation from the prince whose authority contracted it. Infamy of fact, even arising from a heinous crime and deserving of deposition, is removed by public and constant amendment of life." (See the statement number 362. For this irregularity, due to infamy, coincides in the same case with a defect and with a sin.)

455. "The seventh impediment arises from a lack of freedom. Therefore, the following are irregular: 1. All those who are properly called slaves (and according to Layman, book 2, volume 4, chapter 8, even those born into slavery), until they attain full freedom. A slave who is ordained knowingly and without the consent of the lord remains free by that very act, as stated in *Si servus* and *Nulli*, Dist. 54. However, the lord may free him with the condition that he serve in those things that do not contradict the clerical state, as stated in *Nullus*, concerning slaves who are not ordained. If, however, a slave is ordained without the lord's knowledge, he remains a

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slave, unless he is instituted in the sacred office, and unless, in addition, he pays double to the Bishop, or to others cooperating, or to himself; Volume V."

[*Latin ed. p. 486*]

"He who, when unable to fulfill his duties, remains a servant, if he is a deacon; but if he is a priest, he must serve his lord in all things that do not disgrace his state, and offer Masses for the Lord: unless the lord, knowing that he has been ordained for a year, conceals this, and does not recall him. Thus, Salm. lib. c. p. 5. n. 60 and 64, from the canons cited there. 456. — 'II. Those who are married are irregular, unless their wives consent and vow chastity.' (See the statements on Sacred Orders, book 6, n. 842.) III. Those who are bound to a secular court, that is, to a secular court, by oath or salary, as judges, lawyers, etc., as long as they hold such offices. (As stated in c. 4, 2 and 3, dist. 54, and o. unie. de oblig. ad ratioe. However, exceptions are made for those who are appointed as advisors to the Pope, or who are established by custom as advisors to the king for civil cases, as taught by Laym. Pal. Suar. Corn. with Salm. de oens. c. 9, p. 5, n. 64.) 'However, unless they have a special dispensation from the Pope for these offices, as is the case with some clerics in the courts of princes, who are occupied in civil cases, but not in criminal cases; or unless custom allows this with the knowledge of the Pope. IV. Soldiers, at least as long as they are bound by oath; also treasurers, and public depositaries, and those who administer public funds.' (See the statements in book 4, n. 838.) 'Also, those who are appointed as officials, and who have practiced cruelty or shameful acts, or who have ministered in matters of bloodshed. M. Leo p. 3. f. 369. 457. — 'Octava, due to a lack of gentleness, that is, due to a permissible change, or homicide in a just war, or in a judgment. This is what the Church has established, because a priest represents the person of Christ, who, being most gentle, never harmed anyone. However, for this, it is required that the killing or mutilation actually occur. Therefore, intention alone is not sufficient, nor is a serious wound.' Bonac. d. 7, qu. 4. Tan. d. 6, qu. 10, d. 44. Therefore, it is resolved: 458. — '4. He is not irregular who mutilates or kills in defense of honor, life, chastity, etc., or even of a neighbor, because irregularity is not established by law, except for homicide in a just war or in a judgment.' Tann. loc. cit. (See the statements in n. 389.) 459. — '2. He becomes irregular in war who mutilates or kills with his own hand, but not a cleric who exhorts to fight bravely in a just war (unless he exhorts to kill this or that particular person); the same is true of a military leader, a bugler, etc.' Bonac. p. 4. (A cleric, if he is in sacred orders, or holds a benefice, and is serving in war, becomes irregular if he ever uses a weapon in any conflict, even if he has sworn an oath not to harm anyone; see Card. Lamb. Notif. 404, n. 49, infra. Therefore, in a just defensive war, one does not become irregular by killing, as stated by Salm. de oens. c. 9, p. 2, n. 20.

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Holzm. n. 398, and others.)"

[*Latin ed. p. 487*]

"Firstly, this is evident from the first canon of the decree on ecclesiastical immunity and from St. Clement's First Rule concerning clerics. However, in a just offensive war, the one who kills is irregular, but not if others kill; Holzmüller, op. cit., and Benedict XIV, Notitia, 404, no. 45, citing from 'Petitionem tuam,' 'Dilectum,' 'Significasti,' and 'De homie.' In an unjust war, if one person dies, all are irregular, as is certain among all, as stated in D. Th. 2.2, question 64, article 8. It should be noted that a cleric (whether he has been ordained, or holds a benefice, and even if he has fired bombs) is irregular if he is a soldier, even if he swears that he has not harmed anyone, as can be read in Lambrecht, Notitia, 404, no. 49 and 460.

Secondly, he who urges others to kill, in general, is not irregular, whether the war is offensive or just, as commonly held by Busembach, Bona fide, d. 7, qu. 4, p. 4, no. 7, and Cont. Tourn. de irreg. part. 2, cap. 8, art. 4, v. Quæres 2, Cono, p. 504, no. 48, and Salm. c. 9, no. 49, and others, based on the aforementioned canon, which declares irregular only he who kills. What if someone in a just war urges others to kill in a particular instance? Busembach, as above, and Bona fide do not exempt him from irregularity. However, they likely contradict Salm, as stated in no. 49, at the end, because in the aforementioned text, as well as in others, the discussion is only about killing or maiming, not about exhortation.

Thirdly, 'In a just judgment, those who actively and effectively, and proximately, cooperate in death or mutilation become irregular, through an action that is by its nature suited to that purpose.' (Thus, from St. Clement's First Rule concerning clerics, chapter 'Sententiam, ne cler. vel mon.' concerning the excesses of prelates, etc.) 'It is said that I. Cooperate those, such as a judge delivering a sentence, a notary writing it, ministers executing it, witnesses, etc.' (However, transcribing a sentence does not incur irregularity, as stated by Bona fide, d. 7, qu. 4, p. 4, no. 5, with Suarez, Fillippo, Ugolini, Regius, etc., and Natalis, from Alexander and Cabassut, apud Cont. Tourn., l.c., art. 3, v. Dico 3. They also hold the same opinion regarding the one who writes.)

Fourthly, 'It is said II. Actively, meaning from the side of those who are killed; because one is not irregular if he is only passively involved, and from the side of the one who is killed, such as a confessor urging someone to confess the truth, or to acquiesce to a just sentence, which he cannot postpone except through an unjust appeal. See also Diana, p. 4, t. 2, r. 99.' (Thus also Holzmüller, no. 387, and Cont. Tourn., l.c., v. Dico 7.)

Fifthly, 'It is said III. Effectively, meaning that an assistant, e.g., one who carries wood to burn an enemy who is already suffocating, is not irregular; nor is one who is present at an execution, if his mere presence does not influence it.' Thus, Suarez, d. 47, sect. 4, no. 40, Pal, p. 23, §. 4, no. 2, Bona

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fide, p. 4, no. 48, and Salmant. ile cens. c. 9, p. 4, no. 2, with Avila, Diana, and Gibault, hold this opinion most commonly, contrary to Sayrius. The text in chapter 'Sententiam, ne cler. vel mon.' does not contradict this, which prohibits clerics and monks from attending such executions, because either they are excused, or they are only venially obligated."

[*Latin ed. p. 488*]

Bonac. teaches this on page 4, paragraph 46. Salm. states it in the aforementioned passage, and Cont. Tourn. teaches it in the aforementioned passage, section 5, sentence. It is testified to be the common opinion with Avila and Cabass, and that it does not exceed venial sin; indeed, Navar and Avila believe that clerics do not sin in this matter to any significant degree.

464. — "It is said that those who cooperate remotely are not irregular, as are those who make swords or sell them, or legislators who enact capital laws; (From c. Delatori, cause 5, question 6, or those who urge the King to enact a law; Salm. ibid. n. 7.) 'A preacher, in general, saying that malefactors should be punished;' (As Salm. teaches, in common.) 'A confessor, when asked whether the accused deserves death, if he responds that the judge must perform his duty without partiality, because these are all only remote causes.' (This is also the opinion of all; see Salmant. dict. n. 7.) However, they would be immediately involved, and therefore irregular, if they did or said something in particular, from which the death of someone would result, or even be hastened, for example, if someone were to urge the accused effectively; to help him climb a ladder, or to assist him in this way, or if a judge were to respond in particular, saying that this person should be chosen.' (Therefore, they agree with Busemb., Bonac. page 4, paragraph 6, and Avila, Sayr., Henr., etc., apud Salmant. de cens. chapter 9, page 4, paragraph 8. It is considered irregular for a confessor, or another who is consulted by a judge in particular about a certain person, to respond to him that he should be killed. However, it is more probable that Holzm. n. 387, with Mol. and Laym. Pal. §. 3, n. 7 and 8, and Salm. in the aforementioned passage, with Vasq., Pelliz., Hurtad., Turrian., etc., deny this. The reason is that this irregularity arises from a lack of leniency inflicted only on those who cooperate in the killing or mutilation, such as necessary ministers, and not on others, especially those who are justly present. They also add, probably, as Cont. Tourn. teaches in the aforementioned passage, section 5, sentence, and Busemb. and others in n. 466, that it is not irregular for a confessor to advise the executioner to perform his duty."

465. — "However, even those who cooperate immediately can be excused from irregularity, for example: 1. If it is done unintentionally, or with only slight awareness, for example, if a confessor says, 'Let us hurry,' or if he urges the animal on which the accused is being transported. 2. If the cooperation is very slight, such as if he orders the accused to climb just one more step; because the smallest action is considered to be nothing,

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according to Avila and Henr., apud Bon. q. 4, part 4, n. 9. Also, Suar., Regin., Layn., etc. (contrary to Vasq., Turr., Hurt., Bann., etc.), who believe that no one becomes irregular from homicide unless he is a public minister of justice, either for the purpose of proving the case or for its execution; or if he is a private individual acting unjustly and with sin. This opinion is considered probable by Diana, page 3, volume 4, section 79, and in the Additions, section 45, and page 8, volume 7, section 64." (And it is truly very probable, as noted in the annotation above.) "Therefore, they deny that a confessor, or anyone else, becomes irregular if he encourages a thief to..."

[*Latin ed. p. 489*]

"1. He who ascends the scaffold, and bows his head to receive the blow. 2. He who says to the executioner, so that he may expedite the execution of the condemned, 'Do what you must do.' 3. He who, while the condemned is being led to execution, suggests a shorter route. 4. He who sells, or lends, the scaffold, ropes, and other instruments, even he who made the axe. 5. He who, when questioned by the judge, whether he is bound to condemn the accused, answers that he is bound. 6. He who, believing the executioner to have already killed the condemned, indicates that he is still alive, and therefore the executioner must strike him again with his foot." (Thus also Salm. de cens. c. 9. p. 4. n. 9. ad 41, with Pal. Pelliz. Hurt. Turrian. Diana, Machad. etc.) 466. — "It is said that V. [irregular] by action from its own nature, etc., that is, which is, by itself, the cause of such an effect: because the effect, by accident, is not imputed to one who is doing a licit act. Therefore, it does not make one irregular to say to the executioner: 'No one prevents you from doing your duty; I have done mine.'" (Thus, it is also probably said by Cont. Tourn. l. c. v. Dico 7, and Salm. ibid. n. 40, with Avila, and Henr.) "Neither ecclesiastical judges, when delivering a sentence to the secular arm; nor clerics, accusing someone in a criminal case: provided that they expressly protest that they do not intend that the person be punished with the penalty of blood; but only that they themselves, or their own, may be satisfied, or that evils imminent to themselves, or to others, may be prevented. See Bonac. qu. 4. Tann. l. c. etc." 467. — "From c. Sententiam sanguinis, it is forbidden to clerics and monks to involve themselves in a case of blood (that is, where death or mutilation follows) by judging, testifying, or executing, etc., in sacred constitutions or benefices, and to all regular canons. And therefore, they sin mortally if they assist in it in any way." 468. — "All those who contribute to the sentence of blood are irregular, and 1. Judges, and their assessors; but not temporal lords, even ecclesiastical ones, committing others to such cases, from c. ult. ne cler. vel mon. 6, unless they order the judge to have someone hanged, or to immediately execute the sentence; Pal. §. 4. n. 6, and Salm. de cens. c. 9. p. 4. n. 5, with Henr. Corn. II. 2. Voluntary witnesses, who freely offer

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themselves to testify against the accused; even if they protest that they do not intend the sentence of blood; for if they are compelled to give testimony, they are certainly excused, as rightly taught by Suar. d. 47. sect. 3. n. 4, Bonac. p. 3. n. 8, Pal. §. 3. n. 3, and Salm. ibid. n. 42, with Con. and commun. And the same must be said of advocates and procurators of the accuser who are compelled to defend him; Salm. ibid. with the same. 3. Accusers or informers (whether formal or material, namely, if they only present complaints, as Tambur. §. 44. n. 3. p. 298 says), who accuse the accused of a crime worthy of the sentence of blood before a secular judge, seeking criminal vengeance. And then both a cleric and a layperson who accuses become irregular, as commonly stated by Bonac. Pelliz. Pal. c. 9. n. 48. With this difference, that a cleric,..."

[*Latin ed. p. 490*]

Furthermore, if there is an irregularity, he commits a mortal sin if he is in Holy Orders, or has received ecclesiastical benefices, and accuses without just cause; or if there is a just cause, and he accuses without protestation, as stated in Salm. book 1, chapter 2, number 2. However, the accuser (whether a layperson or a cleric) incurs an irregularity only if he accuses the accused solely to protect his own interests or to seek compensation, provided he makes a protestation that he does not wish to incur the penalty of blood, as is stated in c. Præl. concerning homicide, section 6. This applies even if such a protestation is feigned, as stated by Suar. d. 47, section 2, number 3; Bon. p. 2, number 44; Pal. section 3, number 2; and Salm. ibid. number 15, with Avila, Conc. Fill., Pellix, Corn., Henr., etc. Moreover, even if the protestation is made after the accusation, as long as it is made before the sentence, as stated by Bon. number 8; Sayr., Pell., and Salm. ibid. It should be noted that the protestation is only valid in one's own case, but not in the case of others, unless they are relatives up to the fourth degree of consanguinity, as stated by Pal. section 2, number 6; Conc. p. 500, number 19; and Salm. ibid. number 17, with Bon., Corn., Pell., Henr., etc.; or unless the case pertains to one's own church, as stated by Suar. number 20 and Bon. number 5, with Mol., Sayr., Avila, Fill., Ugol., Rodr., Henr., etc. The Council also states the same if the case pertains to domestic matters. Furthermore, if damages are to be inflicted on others in the future, and cannot be remedied in any other way, one can and sometimes should accuse a cleric after making a protestation, or even without a protestation, as stated by Salm. de cens. chapter 9, p. 4, number 47, because such an accusation is merely a defense of innocence.

469. — It is questioned whether Bishops can grant a dispensation in this irregularity, if it is hidden? Some, such as Dian., Sa., Barb., etc., as cited in Salm. p. 2, ibid. number 23, affirm this, because the Council of Trent grants them the power to dispense in all irregularities, except for voluntary homicide. However, it is more accurate, as stated by Bon. p. 5, number 43;

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Pal. section 5, number 7; and Salm. in the same book, with Bon., Hurt., Pal., etc., to say that it must be denied, because the Council clearly speaks only of irregularities arising from a sin. However, regular prelates can certainly dispense with their subjects in this irregularity, whether it is hidden or public; because the regulars have a universal concession to dispense in all irregularities, except for voluntary homicide, according to the limitation given in number 396. Thus, as stated by Dian. p. 2, iv, 4, v. 69, and Salm. ibid. number 24, with Lez., Bord., Dian., Cand., Villal., etc.

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470. — Finally, it is worth noting in which cases, or censures, irregularities, incapacities, or other penalties, one can appeal to the Holy Penitentiary for absolution, dispensation, or remission. In the Bull which begins "Pastor bonus," issued by His Holiness Pope Benedict XIV on April 43, 1744, it is stated that the Holy Penitentiary can absolve from all cases and censures, including those of the Bull of the Holy Supper, for both religious and secular clergy.

[*Latin ed. p. 491*]

Laymen are also subject to public censures imposed by law in both forums; and also by a private individual, if the jurisdiction of the judge has expired, or if the one imposing the censure has reserved it for the Apostolic See, provided that satisfaction has been given to the judge and the injured party. If, however, the injured party unjustly rejects the offered satisfaction, the Penitentiary can determine a suitable satisfaction.

II. It is possible to absolve hidden heretics, provided they have not performed any external acts by which others might recognize them as heretics; also, public heretics, in the case where it is not necessary to denounce accomplices. It is also possible to absolve princes, administrators of public affairs, and bishops, and other prelates from public censures issued by Bulls of Communion.

III. It is possible to grant a dispensation in hidden irregularities and incapacities, even those arising from voluntary homicide, although not so that, after the homicide, they may be promoted to the episcopate. Also, in incapacities and irregularities arising from heresy, provided they have been entirely hidden.

IV. It is possible to grant a dispensation to those who have committed homicide and other crimes, so that they may be able to profess in an approved religious order, and subsequently become priests.

V. It is possible to grant a dispensation to those who have been improperly promoted, so that they may secretly receive the omitted orders, without observing the prescribed intervals and times, but not the Sacred Orders in a single day.

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VI. It is possible to grant a dispensation to those who have been secretly ordained in a simoniacal manner.

VII. It is possible to validate the titles of benefices obtained by those with a hidden incapacity.

VIII. It is possible to remit part of the simoniacal price due to the debtor's poverty.

IX. It is possible to remit the fruits improperly received from the French, Belgians, Poles, and those beyond, and to make a settlement with the Italians, Spaniards, etc., and to remit entirely to the poor.

X. It is possible to remit part of what has been improperly taken or retained, if the owner is uncertain, in a hidden case, and the offender is poor, providing the remainder is paid to the poor, or to pious works in the places, if possible, where those things were taken.

XI. It is possible to absolve those who have received gifts from religious, provided they do not exceed ten solidi, or even if they exceed that amount, after prior restitution, or after a promise to make amends.

XII. It is possible to grant a dispensation to girls who are not virgins, so that they may enjoy a legacy left to virgins, in hidden cases, and in the forum of conscience; or to virgins, so that they may enter a monastery of Penitent women.

XIII. It is possible to relax oaths that are not in favor of another.

XIV. It is possible to dispense with simple vows, even those of chastity, by changing them, or by postponing their fulfillment.

XV. It is possible to grant a dispensation by changing to other prayers, or other pious works, in place of the recitation of the Divine Office.

XVI. It is possible to grant a dispensation in hidden cases with any religious concerning irregularities, incapacities, and penalties; but not in the public case of a defect in the generation concerning the general priesthood; in public cases, only after hearing the superiors.

XVII. It is possible to absolve apostates from censures, with the condition that, if they do not return within a specified time, a dispensation may be granted regarding any irregularity they have contracted, until their actual return. It is also possible to grant permission for them to pass into another order.

XVIII. It is possible to grant permission to pass into a less strict religious order, provided that the rules of that order are observed.

[*Latin ed. p. 492*]

The observance [of the monastery] does not pertain to the Order of Saint Benedict of the older observance; nor to similar congregations of any order. The same applies to the nuns beyond the mountains. XIX. [He] can absolve, and grant dispensations concerning defects and censures, even for

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the violation of enclosure. XX. Furthermore, [he] can grant confessors to the nuns (see what has been said about this, book 6, paragraph 576). XXI. When the Apostolic See is vacant, [he] has the faculty in foro conscientiæ, even in cases concerning which he could not act while the Pope is living; however, with the understanding that, if, when petitioning the new Pope, they do not present themselves, this faculty shall pass to the signature [of the new Pope] after the Cardinal Penitentiary enters the conclave. Other matters pertaining to the subject of marriage, see book 6, paragraph 1444. Other, less essential observances, you can find in the aforementioned bull, *Pastor bonus*. Finally, note this: when the letters of the Holy Penitentiary are entrusted to a master of theology, or a doctor of canon law, they can be executed by confessors of the Society of Jesus designated by the General or Provincial, with his permission, as granted by Gregory XIII, April 3, 1582. And the same applies to jubilate readers of the Order of Friars Minor, by the concession of Innocent XI, November 27, 1679. And therefore, the same applies to all regulars who share in their privileges: thus reports Elbel, volume 3, *Conf.* 20, page 506, paragraph 543.

PRAISE to Jesus, our Redeemer, and to Mary, Immaculate, our Queen and Mother.

[*Latin ed. p. 493*]

INTRODUCTION. 1. The reward will indeed be great with which good confessors will be compensated in eternity, and those who are so secure in their predestination, who dedicate themselves to the salvation of souls, are so certain of this, as the Apostle James clearly testifies with these words: "He must know that he who causeth a sinner to be converted from the error of his way shall save his soul from death and shall cover a multitude of sins." But the Church laments and mourns, seeing so many of her children destined for hell, either because of the wickedness of confessors, or their ignorance, or their negligence, or their impiety; for the ruin or salvation of the people depends primarily on the good or bad governance of these confessors. It is said that suitable confessors are needed (according to St. Pius V), and behold, this is the reformation of all Christians in every way. There is no doubt that if all confessors possessed that knowledge and goodness of character which this ministry requires, neither would the world be so defiled by the banquet of sins, nor would hell be so filled with the souls of the baptized. And when I speak of goodness, I do not here mean merely that habitual goodness which signifies a simple state of grace, but rather positive goodness, which is fitting for the minister of penance, to whom, as a nurse, a double nourishment is needed, one for his own sustenance, and the other for the sustenance of his flock; for since the confessor must direct the consciences of others, he must be very careful not to err either through excessive leniency or through immoderate rigor. He must treat so many wounds of sin, lest he himself be defiled; he must often converse

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with women and adolescents, hearing their confessions concerning those matters about which they are very ashamed, without feeling that anything has happened to him; he must arm himself with great fortitude when dealing with prominent people, setting aside all regard for worldly things. And, to encompass all things in a single word, he must be rich in charity, sweet in meekness, and grave in prudence. In order that all these qualities may, as is fitting, be fulfilled, it is not enough to possess ordinary goodness, which certainly will never be attained by one to whom prayer is not familiar, nor meditation is daily. For no one can obtain the light and the graces necessary for this great ministry (and even, as is commonly said, to the fear of the angelic hosts) by any other means. But let us proceed to the purpose of our work, namely, the practice of hearing confessions, of which we shall speak here. In this Practice, I will expound many doctrines pertaining to it, but I will not repeat those which I have described more fully in the Moral Work; here, I will only note (with letters inserted in between) the passages of the Work to which I refer the reader, so that he may read more copiously the doctrines confirmed by reasons and authorities.

[*Latin ed. p. 494*]

THE PRACTICE OF THE CONFESSOR FOR WELL-RECEIVED CONFESSIONS. CHAPTER FIRST. ON THE OFFICES OF THE CONFESSOR. 2. There are four offices which a good confessor ought to exercise: namely, those of a father, a physician, a doctor, and a judge. In this chapter, we shall speak of each of these individually. § I. Concerning the office of a father (4). 3. The confessor, in order to fulfill the duties of a good father, must be filled with charity. And first of all, he must show charity by treating all with kindness, whether they be poor, uneducated, or sinners. Some devote only a short time to hearing the confessions of certain devout individuals or respectable persons, because they do not have the courage to reject them; but if a miserable sinner approaches them, he is heard with reluctance and driven away burdened with reproaches; thus, that poor soul, after having made the greatest effort to come to his sins, feeling himself so harshly received, may conceive hatred for the Sacrament of Penance, and, despairing of finding someone who will help him and absolve him from his sins, may fall into the slippery slope of a lost life, and fall into the despair of salvation. Conversely, good confessors act differently; when such sinners come to them, they receive them kindly, and (as a victor who has captured his prey) rejoice, realizing that fortune has befallen them, to snatch a soul from the hands of the demon. They know that this Sacrament was properly instituted not for the just, but for sinners. (1) To which charity pertains. Hom. ap. tr. 21, n. 1.

[*Latin ed. p. 495*]

For confessors; for even venial sins, in order that they may be forgiven,

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do not require sacramental absolution; but can be expiated by many other means. They also know that Christ declared, "For not the just, but sinners, are they that come to me." *Matthew* 9:13. Therefore, the confessor, filled with the bowels of charity, the more he finds souls defiled by the multitude and wickedness of sins, the more, in order to profit them for God, he embraces them with greater charity, and offers them comfort with these or similar words: "Brother! Be of good cheer, do not be afraid; confess your sins fearlessly. Open everything freely, let nothing shame you. It does not matter if you do not examine every corner of your conscience; it is enough if you answer the questions. Give thanks to God who has waited for you and brought you to repentance. Now you must change your life. Rejoice, because God certainly remits all your sins, however great, if you have a good will; and therefore He has waited for you, so that He might prepare you. Therefore, with a cheerful spirit, tell Him everything, conceal nothing."

4. Then, he must show even greater charity in receiving the confession. He must take care not to show impatience or boredom; nor should he show astonishment at the sins that are recounted, unless the penitent is so hardened of heart, or so impudent, as to expose more and more terrible sins without any blush, and without any sign of displeasure or emotion; because then it is necessary to act with all one's strength, so that the extent and magnitude of those sins may be perceived; therefore, a more severe correction is required then, so that he may be awakened from a deadly lethargy. It is true, as the doctors say, that confessors should refrain from correction during the act of confession, lest the penitents, being frightened, conceal their sins; nevertheless, this is understood in a general sense; otherwise, it often happens that it is necessary not to proceed further, and to correct the penitent immediately, especially when he confesses a very grave sin, or if he himself is accustomed to some vice, so that he may understand the gravity of the sin. However, he must take care not to exasperate him, nor to terrify him. Therefore, after he has corrected him as much as necessary, he should immediately encourage him to confess the remaining sins, saying: "Brother! Do you want to turn away from this vice? Is that so? And since you are prepared to do this, be of good cheer. Therefore, tell me the rest of your sins, nothing hidden." Be careful, I beg you, not to commit any sacrilege; for this would be the greatest of all the sins that you have committed up to now. Therefore, tell Him everything with a strong spirit, overcome yourself: confess everything sincerely: for God is ready to prepare you."

5. Finally, at the end of the confession, it is necessary for the confessor to devote himself with greater ardor and zeal, so that he may make the penitent understand the gravity and multitude of his sins, and the miserable state of damnation in which he finds himself; but this must always be done with the greatest charity. However, it is more appropriate to use more

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serious words then, so that in this way he may better lead him to a good...

[*Latin ed. p. 496*]

The fruit of correction may return; nevertheless, he must ensure that the penitent understands that what is said to him does not proceed from an angry spirit, but from singular love and compassion for his soul. This can be expressed in this way: "My son, do you consider the life of the damned, which you have led? Do you perceive the evil that you have committed? What evil has your God ever done to you, whom you have so wickedly despised? If Jesus Christ had been no enemy to you, could you have behaved worse with Him? But I implore you, consider who this Jesus is. He is the one who, though God, needing nothing, became man for your sake; He willed to die on the cross to redeem you from hell. Ah, son, if you had died this very moment, if on this night, where would you be going? Where would you be now? You would be in the eternal fire of hell. What would be done to you if you continue to live your life as you have lived it thus far? Can you be saved in this way? Wake up and see that unless you change your ways for the better, you are already condemned. What good have you gathered from so many sins? Do you not consider that you are preparing a double hell for yourself, one here of anguish and misery, and another there of punishments? Come now, son, turn away from evil, cease to sin, and entrust yourself entirely to the arms of God, which are extended to receive you; He has already forgiven you as much as you have sinned. I want to help you with all my strength and with all my heart; come to me whenever you wish, for you will find a Father who will receive you kindly. Therefore, firmly resolve to become holy. It depends on you; for God is always ready, and this time has been given to you so that you may turn away from evil and do good. Oh, how good it is to have God as a friend. (St. Francis de Sales, in order to draw sinners to himself, took the greatest care to ensure that they understood the peace that those who adhere to God enjoy, and the unhappy life that is led by those who are alienated from God.) Afterwards, he will help him to form a resolution, and if he is disposed, he will absolve him; and he will suggest salutary remedies by which he may keep himself from sin, and he will impose penance upon him (but these matters will be discussed in the following section). If, however, he is incapable of absolution, or if it seems advisable to postpone absolution, he will assign him a day on which he must return, saying to him in this way: "On that day, brother, I will expect you, do not fail to return to me; be strong and courageous, as I have told you; commend yourself daily to the Blessed Virgin, and come to me. If, perhaps, you find me hearing the confessions of others at that time, approach, for I will hear you before others. If I am elsewhere, make arrangements for me to be summoned; I will abandon everything to hear your confession." And in this way, he will dismiss him with kind words. This is the way in which sinners can be saved, namely,

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by dealing with them with as much charity as possible; otherwise, if they enter the confessional and encounter someone who treats them harshly, they will be horrified by confession, they will neglect to confess, and they will rush headlong into perdition.

[*Latin ed. p. 497*]

§. II. Concerning the office of the physician (1). 6. The confessor, in order to provide suitable remedies for the infirmities of his penitent, must know the origin and cause of all his spiritual illnesses. Some confessors, besides the outward appearance and number of sins, inquire into nothing else. If they see a penitent who is disposed [to repentance], they immediately absolve him; but if not, without uttering a single word, they dismiss him, saying with a stern look: "Depart from me, for I cannot absolve you." Good confessors act differently; for they first begin to investigate the origin and severity of the illness, asking about the habit of sinning, about occasions, about the time, about the place, about the people with whom [the sin is committed], so that, by considering these circumstances, they may better be able to correct the penitent, to prepare him for absolution, and to add salutary remedies. 7. After these questions have been asked, and the origin and severity of the illness have been ascertained, the confessor proceeds to make the necessary admonitions. And although he, like a father, ought to listen to the penitent with charity, yet, as a physician, he is bound (as far as necessary) to warn and correct him, especially those who, although burdened with many mortal sins, rarely approach the Sacrament of Penance. And he must fulfill this duty even if the penitent possesses some notable quality, namely, if he is a magistrate, a prince, a priest, a parish priest, or a prelate, if he accuses himself of something without excessive emotion (2). The Most Holy Pope Benedict XIV states (Bulla, Apostolica. §. 12): "The admonitions of confessors are more effective than the sermons themselves"; and rightly so, because the preacher is unaware of the particular circumstances, which are clearly known to the confessor; therefore, he can much better apply the necessary admonitions and the remedies that are beneficial for the illnesses. Nor should the confessor attend to other penitents who are present, for, as St. Francis Xavier said (Tursell. in vita l. 6. c. 17), "it is better to hear the confessions of a few properly, than the confessions of many in an unseemly manner, and without benefit." It should be noted that those confessors act wrongly who, if they find a penitent who is not disposed [to repentance], do not spend any time with him, but immediately order him to leave. Such confessors should know that the opinions of those doctors (l. 6. n. 608. v. Hic Adverte) are based on sound reasons, who hold that, insofar as possible, confessors should prepare the penitent for absolution, even if he is not disposed, by presenting to him, for example, the greatest injury (1), to which prudence is related. Hom. ap. tr. 21. n. 1. Edit. (2) "But such corrections should be made with gentler and more discreet words," but

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with greater strength of mind and zeal, because the sins of these people often lead to a more pernicious license, because of the greater harm that their bad example can cause to others. Hom. ap. tr. 21. n. 4. Edit.

[*Latin ed. p. 498*]

By which [person] offends God with his sins, the imminent danger of his damnation, etc. And it matters little what others may expect, or whether they depart unconfessed; for the confessor is bound to give an account only for that which is confessed to him, and not for others, on the day of judgment. 8. And thus, the confessor is also bound to admonish the penitent concerning any culpable ignorance that he may have, whether it pertains to natural law or to positive law. If, however, the penitent is held by an invincible ignorance; then, if that ignorance is concerning matters necessary for salvation, the confessor ought to remove him from that ignorance; if it is concerning other matters, about which invincible ignorance can arise, even if it pertains to divine law, and if the confessor prudently judges that the admonition would not be beneficial to the penitent, then it is permissible to abstain from the admonition, and to leave the penitent in his good faith. On this point, the doctors of a stricter opinion agree; the reason is that greater care must be taken to avoid the danger of a formal sin than of a material sin, because God punishes only the formal aspect; indeed, He takes offense only from that; this has been abundantly demonstrated in the *Opera Moralia* (book 6, chapter 610), with the agreement of most doctors, a few excepted. On this matter, it is also inferred (book 6, chapter 641) that if someone has contracted a marriage that is invalid due to some hidden impediment, and remains in good faith, and is exposed to the danger of infamy, scandal, or incontinence, if the nullity of the marriage were to be revealed, then the confessor ought to leave him in his good faith, until he obtains a dispensation from the sacred penitentiary [office]. (However, this exception does not apply if the dispensation can be readily and easily obtained.) And in this case, namely, when one lives in good faith, the doctors say (Ibid.) that the confessor ought also to obligate him in this regard, by saying in general that spouses are bound to fulfill their duties to each other. How, however, should the confessor act with those who are about to contract a marriage that is null, and for whom a prudent fear of formal sin or scandal would exist if its nullity were to be revealed? Let the resolutions in the written work be observed (book 6, chapter 643), where it has been abundantly demonstrated that it is the common and safe opinion that the Bishop can dispense in a case that removes an impediment, given the urgent necessity. And if access to the Bishop were also difficult, and in no way could the most serious danger of infamy or scandal be avoided, we have stated (d. n. 643 in fine) the opinion of the Author (*Instruct. pro novis Confess.* p. 2, n. 32, from Ronc. Surd. and Pignat., vol. 3, consultation 33, n. 5) who says that it is not improbable, indeed, it is safe in practice, for a parish priest,

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or another confessor, to declare that the law of the impediment does not then obligate, but rather ceases to be in effect, as it is more harmful than useful. But observe what is said more fully in the cited passage. Thus, also, correction concerning restitution that must be made should be omitted, if it is certainly foreseen that the penitent, who is now in good faith, will not obey the admonition.

[*Latin ed. p. 499*]

9. Moreover, the following cases must be considered: I. If, due to ignorance, a detriment would result contrary to the common good (l. 6, n. 645), because then the confessor, being appointed as a minister for the good of the republic, is bound to prefer the public good to the private good of the penitent, even if he foresees that this correction will not be beneficial. On this matter, superiors, magistrates, confessors, parish priests, and prelates, who neglect their duty, must be thoroughly warned; for their ignorance, even if invincible, will always be detrimental to the community, while others may think that they are permitted to do what they see being done by superiors. And, as taught by the Most Holy Pope Benedict XIV (Bulla, Apostolica, § 20), the confessor must act in the same way towards those who frequent the sacraments, so that it is not judged permissible by others what is observed to be practiced by them without punishment. II. If the penitent had asked a question, because then the confessor would be bound to reveal the truth (l. 6, n. 646); in this case, the ignorance would not be entirely invincible, as is required in order to omit the admonition. III. If the penitent would readily agree to the admonition, even if he does not initially acquiesce (Ibid., v. Excipiendum III). What, however, should be done in the case of doubt, whether the correction will be beneficial or harmful? See in the Works (Ibid., v. Utrum autem.) 40. After due corrections, or admonitions, it is best to strive to prepare the penitent for absolution through acts of true sorrow and purpose; therefore, I wish to warn confessors that there are very few penitents, especially the uneducated, who come to confession with a prepared act of sorrow. Some confessors believe that they have fulfilled their duty if they simply question such penitents in the following manner: "Do you ask forgiveness from God for all these things?" (which is truly not a true act of sorrow?) "Are you truly sorry in your heart for all your sins?" And, without any other words, they grant them absolution. This is entirely different from the practice of good confessors; these, first of all, strive to make the penitents (I speak of those who are bound by mortal sin) experience true sorrow and detestation of sins. And they first prepare them through the act of contrition, e.g., "My son, where should you now be for eternity? In hell? Ah, there you would be tormented forever! Would there be no hope left for you to be rescued from that place! There you would remain, abandoned by all, rejected by God for all eternity! Therefore, are you sorry that you have offended God, because of the hell you have

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deserved?" It must be noted that the act of contrition is not accomplished if someone says that they are sorry for the sin committed because they fear hell, but rather, they must say that they are sorry for having offended God, for which they deserve hell. Afterwards, care must be taken to elicit an act of contrition in this way: "My son, what have you done? You have sinned against the supreme and infinite good; you have shown no regard for Him. You have turned your face away from Him; you have cast Him behind you."

[*Latin ed. p. 500*]

You have despised friendship, and His grace. Therefore, because you have offended God, who is infinitely good, do you now, from the bottom of your heart, repent? Detest and hate above all things the evils and injuries by which you have unjustly offended God, who is so good. Are you not already ready to die a thousand times, rather than commit these things again? Note here 4. that if one is repentant and obtains absolution, even if he confesses another sin immediately afterward and is absolved again, a new act of sorrow must be elicited from him, because then a new judgment is made (l. 6, n. 448). Note 2. that, according to many doctors (l.c., n. 445), it is probable that, for confession to be sacramental, it must be informed by new sorrow; therefore, when someone confesses, if a prior act of sorrow has not preceded, it is not sufficient (when considering the value of the Sacrament) that sorrow is elicited at the end of the confession, but rather it is required that, after the sorrow has been elicited, confession be repeated, at least by saying: "I accuse myself of all those things of which I have just confessed." 44. Finally, it is incumbent upon the confessor to apply those remedies which he judges to be most suitable for the salvation of the penitent, imposing upon him those satisfactions which are more appropriate for his condition, and those which he prudently believes he will actually perform. Let this be noted: although satisfactions must correspond to the guilt according to the Council of Trent (Session 14, chap. 8), which declares that confessors are participants in the sins of others, who prescribe very light penances for very grave offenses; nevertheless, for just reasons, the confessor can diminish the penances, if, indeed, the penitent is strongly affected by compunction, or if the time for jubilees or plenary indulgences were to occur, and especially if he is suffering from some infirmity, whether of the body or of the soul. And finally (so that I may be brief), one must always be prudent and fear that he will not fulfill the satisfaction that corresponds to his guilt. This is commonly taught by the doctors, along with St. Thomas (lib. 6, n. 509). We do not deny that in the Council of Trent (Session 14, chap. 8) it is stated that satisfactions must be prescribed according to the measure of the guilt; but we also know that it is also stated there that they must be salutary for the penitents, and suitable. Salutary, namely, useful for the salvation of the penitents; and suitable, that is, corresponding not only to the guilt, but also to the strength of the penitent. Therefore, it is

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not salutary, nor suitable, for those satisfactions which are not equal to the strength of the penitent, considering his spiritual weakness; for then they would be poison rather than a remedy. And in this Sacrament, moderation of life is more important than all kinds of satisfaction; and the Roman Ritual (De Sacr. Pœnit.) also says that the confessor must take account of the penitent. St. Thomas (Supplem. q. 18, art. 4) says: "Just as a doctor..." does not give a medicine that is so effective that, because of the weakness of the body, it causes greater harm...

[*Latin ed. p. 501*]

A danger arises; thus, the priest, moved by divine inspiration, does not always impose the entire penance that is due for a single sin, lest the afflicted one despair and completely abandon penance. And elsewhere (Quodlib. 3, art. 28): "Just as a small fire is extinguished if many logs are piled upon it, so it can happen that the small affection of the penitent's contrition is overwhelmed by the weight of penance." And he adds: "It is better for the priest to indicate to the penitent the amount of penance that ought to be imposed, and nevertheless to impose only what the penitent can bear." And elsewhere (Opusc. 64, §. 4): "It is safer to impose a lesser debt than a greater, because we are more readily excused before God for great mercy than for excessive severity, since such a fault will be made up for in purgatory." Furthermore, Gerson, Cajetan, and especially St. Antoninus teach that the penance should be such as the penitent will likely be able to perform afterward, and which he will be willing to accept. And if the penitent protests that he does not have the strength to fulfill the prescribed penance, then, as the Archbishop concludes, "however much he may have sinned, he should not be dismissed without absolution, lest he despair." In such a case, he says, it is sufficient to impose a general penance, namely, all that he has done well, using the very words of the Ritual: "Whatever good you have done, etc." These works, imposed in the Sacrament, as Angelicus teaches (Quodlib. 3, art. 28), are of greater value in satisfying for sins. Furthermore, many doctors probably add (Lib. 6, n. 540, v. Idem) that there is a just reason for diminishing the penance if it is judged that the penitent will thus be more attracted to the Sacrament. Oh, how valuable is the wise counsel of St. Thomas of Villanova (Serm. fer. 6, post. Dom. Lætare): "Impose an easy penance, but advise a more severe one." It is also beneficial for the penitent to know the penance that he deserves; therefore, it can be very helpful to indicate to the penitent the canons of penance (of which the more notable ones are noted in the book [Lib. 6, n. 530]). It will also be helpful (as St. Thomas of Villanova says) to suggest a more severe penance; afterward, however, to impose the one that he prudently judges the penitent to be able to fulfill. St. Francis de Sales suggests (Instruct. Conf. c. 8), and the same is confirmed by the Parisian Ritual (Lib. 6, n. 509, near the end), that it is beneficial to ask the penitent whether he has sufficient

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strength for that penance, otherwise it will be changed to another. It will also sometimes be helpful, among the works of satisfaction imposed, to impose some grave satisfaction, but not under grave guilt (Lib. 6, n. 518), or some other work prescribed from elsewhere, or a debt (n. 543).

42. From what has been said, it is clear how imprudently some confessors act, who impose satisfactions on penitents that are beyond their strength. How many of these hesitate to absolve those who have relapsed and are unprepared, and those who are equally in the near occasion of sin?

[*Latin ed. p. 502*]

They are constantly occupied with these matters; and they foolishly believe that they will restore them to grace if they impose heavy penances upon them, even though they foresee that these will not be fulfilled. For example, they order those who have scarcely confessed even once during the year to confess on the eighth day of every month; they command those who have not even been accustomed to recite the Rosary five times a week to recite fifteen decades each day; they impose disciplines, mental prayer, upon those who have never even heard of such things. And what will be the result? The result will be that, although they may accept what is imposed upon them, in order to obtain absolution, they will nevertheless, afterward, make no effort to fulfill any of these things; and, believing themselves to have fallen again into sin, or rather, thinking (especially the uneducated) that the confession they made was of no consequence, because they have not fulfilled the imposed penances, they return to their former way of living, lost to all good; and, terrified by the weight of the imposed penances, they shrink away from confession, and thus continue to grow in sin. And here is the fruit that is gathered to the ruin of so many poor souls, from such "convenient" satisfactions, which are better called most inconvenient.

43. Furthermore, apart from cases of infirmity and extraordinary compunction, a confessor does not act well if, for grave sins, he adds a light penance, which imposes a light obligation; for, although (when it is expedient) a work may be added that is light in proportion to the sins, nevertheless, a serious satisfaction must always be imposed, which obligates under a serious obligation. And here it is necessary to note some things pertinent to the practice of imposing penances.

I. When a penitent has forgotten the penance, it is the common opinion (Lib. 6, n. 520) that he is no longer bound by it, unless it is easily fulfilled, so that he can be reminded of it by the confessor who imposed it.

II. A public penance cannot be imposed for hidden sins; but a confessor is bound to impose one if he cannot otherwise prevent a scandal, or a public affront to someone's honor; but the penitent is not to be forced to perform a public penance if he refuses, and can repair the scandal in another way, for example, by frequenting the Sacraments, visiting churches, joining a congregation, etc. (l.c. n. 512).

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III. Sometimes a penance can be imposed under the condition that the penitent relapses (l.c. n. 534). But it should be noted that such penances may not always have a happy outcome, especially if they are to last for a long time; for they are easily neglected after a relapse, and sins are multiplied.

IV. If a penitent ever asks another confessor to change a penance imposed by a different confessor, many doctors hold that he should make a complete confession to this confessor, at least in general terms, so that he may inform him of the state of his conscience. But many others also say (l.c. n. 529) that this is not necessary, since it is sufficient that the confessor should judge that the penance is not sufficient to bear the weight of the burden; on the contrary, he may judge from the very penance imposed that the penitent is not capable of fulfilling it.

[*Latin ed. p. 503*]

To demonstrate the nature of the sins for which the penance was prescribed, and thus to guide [the penitent], either in changing or diminishing it. And it is probable that the confessor can effect this, when he foresees that the penitent will likely continue to neglect his penance, as before. However, it is not permitted to a lower confessor to change the penance imposed by a superior, except in cases where the penitent could scarcely return to the superior, and, on the contrary, a grave reason urges that the penance be changed, because then it is reasonably presumed that the superior consents (Decree, n. 329). V. The penance cannot be changed outside of confession, not even by the confessor himself; this can only be done by him immediately after absolution is given, and before the penitent leaves the confessional (Decree, n. 529, Question 3).

14. Regarding particular acts of penance to be imposed, it should be noted that the penance should not only be medicinal, but also satisfying for past sins. The rules require that works restraining the flesh be imposed for sensual sins, almsgiving for sins of avarice, prayer for blasphemies, etc. But it must be considered what is more expedient, or more useful for the penitent. Although it is very useful to impose frequent reception of the Sacraments, mental prayer, and almsgiving, it is known that these can be harmful to those who have had little or no experience with them. Generally, the following acts of penance are useful for all: to join a religious group; to elicit sorrow each evening (at least for a time), and to renew the intention each morning, saying with St. Philip Neri: "Lord, do not take away from me today the help of your hands, lest I become a traitor." To visit the Blessed Sacrament daily, and also the image of the Most Blessed Virgin, asking for the grace of perseverance from them; to say at least a third part of the Rosary, and three times the Angelic Salutation in the morning and evening, saying: "My Mother, help me today, so that I may not sin against God." (However, I have often been accustomed to prescribe, or at least to

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advise, this penance of reciting the Angelic Salutation three times with the aforementioned supplication, to those who did not usually use it.) When going to bed, to say: "How much better it would have been for me to die in the fire of hell," or to say: "The day will come when I must die in this bed." For those who know how to read, and especially for clerics, to read daily some book on spiritual matters. St. Francis de Sales (Instruction for Confessors, ch. 8) warns that one should not burden the penitent with too many things, lest he be confused and terrified.

45. Regarding the remedies that should be suggested to penitents, I say that some are general, while others are particular for a specific vice. The following should be suggested to all: 1. Love for God, since He created us for this purpose alone. And it must also be ensured that the penitent understands the inner peace that is given to those who enjoy the friendship of God, and the hell that they experience prematurely, who are estranged from Him.

[*Latin ed. p. 504*]

1. To this [temporal] detriment, which sin brings with it, is added the [detriment] of Divine displeasure. 2. Frequently commend oneself to the Blessed Virgin, by reciting the Rosary; commend oneself to the Guardian Angel; and to some particular protector Saint. 3. Frequent the sacraments, and if ever one should fall into any mortal sin, immediately confess. 4. Consider the eternal truths, and above all, the consideration of death; and it should be instilled in heads of families to have daily mental prayer in common with the family, or at least the Rosary together with the children. 5. When tempted, feel the presence of God by saying: "God sees me." 6. Examine one's conscience each evening, with sorrow and resolution. 7. Regarding secular matters, let them join some congregation, and let priests have mental prayer and prayers of thanksgiving after Mass. And let them read at least some spiritual book before and after Mass. 46. Particular remedies will be assigned according to the diversity of vices; for example, to those who are held by some hatred, it should be suggested that they daily commend to God the person they hate, reciting the Our Father and the Angelic Salutation for him; and when they feel themselves disturbed by the memory of the injury done to them, they should remember the insults with which they have offended God. To those who have fallen into shameful sins, it should be suggested to avoid idleness, bad companions, and occasions; and to those who have contracted a bad habit for a long time in this vice, not only to avoid the immediate occasions, but also certain more remote ones, which, for someone so weak, will become immediate. To this person, it should be especially impressed that they never cease to recite the Angelic Salutation three times in honor of the most blessed Virgin, morning and evening, always repeating before her image the resolution not to sin, and the supplication to obtain perseverance. Above all, let the confessor take

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care that this person frequently receives Holy Communion, saying with the Eucharist: "This is the chalice of the blood of Christ, which shall be drunk for you." To those who are accustomed to utter blasphemies, it should be suggested that they sign themselves with the cross nine or five times on the forehead, and that they daily recite at least once the Our Father and the Angelic Salutation in honor of the Saints, against whom they have blasphemed; and that each morning, as they rise from their bed, they renew the resolution to patiently bear occasions of indignation, and three times say to the B. Virgin each morning: "My Lady, grant me patience"; and this will not only serve to obtain the help of the most holy Mary, but also to find oneself accustomed to saying these very words in the occasions. Or, let them become accustomed to saying: "Cursed be my sin; cursed be the demon," etc. The confessor will assign other remedies according to his prudence, considering the circumstances of occasions, persons, and duties. § III. Concerning the office of the doctor (4). 17. The lips of the priest shall keep knowledge, and shall require the law thereof (1). To which the knowledge of the law pertains. Edit.

[*Latin ed. p. 505*]

From his mouth (Mal. 2. 7). It is necessary for a confessor, in order to properly fulfill his office as a doctor, to know the law; for he who is ignorant of it cannot teach others. But it must be noted what St. Gregory writes, namely, that the office of guiding souls along the path of eternal salvation is the art of arts: the art of arts is the governance of souls. And St. Francis de Sales said that the office of hearing confessions is the greatest and most difficult of all. Indeed, it is the greatest, because it is the end of all sciences, which should be nothing other than eternal salvation; and it is the most difficult, firstly, because the duty of a confessor requires knowledge of all sciences, all offices, and all arts; secondly, because the science of moral theology encompasses so many diverse subjects; thirdly, because it largely consists of so many positive laws and sacred canons, the understanding of which must be obtained according to their true meaning: moreover, each of these laws becomes difficult when considering the circumstances, which create dissimilar cases, and require different resolutions. Some, who boast of being learned and theologians of great note, despise moralists, whom they call "casuists" (a shameful name among themselves), and are unwilling even to read them. They say that it is sufficient, in order to properly hear confessions, to know the general principles of moral theology; for they claim that all particular cases can be resolved by these. Who can deny that all particular cases must be resolved by these principles? But the entire work, and the entire labor, lies in adapting these principles to particular cases, which are entangled in so many different circumstances, and in discerning what principle is appropriate when the circumstances are encountered: this cannot be done without much discussion of the reasons that are

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present on either side. And this is what moralists have accomplished, by elaborating explanations of which principles many particular cases should be resolved. Furthermore, in our time, as has been said, there are so many positive laws, so many bulls, so many decrees, that they cannot be known unless casuists are read, who have collected them, and as the variety of subjects requires, these are found there; and therefore, the more recent these moralists are, the more useful they are to the older ones. With just reason, the author of the Instructions for new confessors (Part 4, 48) affirms that many theologians, however profound they are in speculative sciences, are less knowledgeable in moral sciences, which, as Gerson writes (Tract. de Orat.), are the most difficult of all, and that no one is learned, however versed he may be in them, to whom new things do not happen every day; from which he infers that the study of moral theology should never be abandoned by a confessor. The most learned Sperelli (De Episc. p. 3, c. 4) also says that confessors are greatly mistaken who devote themselves entirely to scholastic studies, considering the time spent on moral matters to be wasted: and then they do not know how to distinguish leprosy from leprosy; this error, he adds, leads confessors and penitents alike to eternal perdition (4). (1) "Therefore, he undoubtedly sins gravely who, not being sufficiently instructed, dares to hear confessions."

[*Latin ed. p. 506*]

48. We do not deny that a lesser degree of knowledge is required for hearing the confessions of simple, rural folk, than that required for hearing the confessions of courtiers, merchants, clerics, and the like. Furthermore, a lesser degree of knowledge is required to hear confessions in a town, than in a city; and especially if, somewhere, there is such a lack of confessors that penitents would have to abstain from confession for a long time, or travel elsewhere (l. 6, n. 628). But this is not sufficient to excuse certain confessors who, having read only a brief summary of moral theology, rashly proceed to hear confessions. At the very least, a confessor must know I. to which matters his jurisdiction extends. Let everyone understand that secular and regular priests of another Order cannot hear the confessions of religious, without the permission of their superiors; except in cases where they are traveling, or if they are dying, and have no companion, or no other suitable priest of the same religion. And then, religious can be absolved by any suitable priest, provided that their superiors, by granting permission to their subordinates, intend to give it according to custom, namely, to confess to any suitable priest (Lib. 6, n. 575). Furthermore, every confessor must know the *casus* and reserved matters, at least those into which people most frequently fall, such as papal excommunications which are found in the *bulla*, heresy, the reading, retention, or sale of heretical books that explicitly treat of religion, or contain formal heresy; also, the five papal cases of Clement VIII, namely, grievous or minor assault on a cleric or

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monk, real or confidential simony, violation of the enclosure of nuns for an evil purpose, violation of ecclesiastical immunity, and dueling; also, the excommunications issued by Pope Benedict XIV against those who absolve accomplices in scandalous matters (Lib. 6, n. 553), and in those cases, the name of the accomplice can be inquired of by the confessor, even through the denial of sacramental absolution, if he refuses to reveal it (l.c., n. 494); and other excommunications that can be observed in the treatise on censures. II. He must know how to distinguish between venial and mortal sin, at least in their common forms; and he must know to doubt about other matters. III. He must know the questions to ask, and the circumstances that alter the nature of sins; what constitutes the proximate occasion, what induces the obligation of restitution; also, what kind of sorrow and purpose should be present, and finally, the remedies that are most effective for amendment. And to be brief, I declare that he is in a state of damnation who exposes himself to hearing confessions without sufficient knowledge. God Himself reproves such a person with these words: "My people have been silent, because they had no knowledge: because thou hast rejected knowledge, I will reject thee, that thou shall not do the office of priesthood to me: and thou hast forgotten the law of thy God, I also will forget thy children" (Lib. 6, n. 628). Hosea, chapter 4. Nor will the approval of a bishop excuse him, if he manifestly knows himself to be unfit: "The bishop approves, to hear confessions: the bishop, who approves him: and also the penitent, who confesses to him, knowing his unworthiness." *Homo Apostolicus*, trans., 10, n. 95, ed.

[*Latin ed. p. 507*]

Indeed, it does not instill necessary knowledge, but presupposes it. I say plainly, that a confessor who only doubts may well, nay, ought to rest in the judgment of his superior, provided that he strives to render himself capable through more diligent study. However, no confessor ought to abandon the study of moral theology, because, from so many diverse and mutually disparate matters pertaining to this science, many things, although read, are forgotten with the passage of time, because they occur less frequently; therefore, it is necessary always to recall them to memory through frequent study. § IV. Concerning the office of the judge (1). 19. Lastly, the office of the confessor is that of a judge, and this implies that, just as a judge is bound to first know the reasons, then to examine the circumstances of the case, and then to pronounce judgment: so too, the confessor must first become aware of the penitent's conscience, then examine his disposition, and then command absolution, or deny it. And with regard to the first duty, which is to know the sins of the penitent, although the duty of examining the conscience belongs primarily to the penitent, nevertheless, whatever other doctors (Lohner, *Instructio practica*, p. 33) may have said, there is no doubt that if the confessor knows that the penitent has not sufficiently

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examined his conscience, he is bound to question him, first about the sins in which he might reasonably have fallen, and then about their species and number, as is proven from c. *Omnis utriusque secus*, in the book *De Paenitentia* and the Roman Ritual. (See book 6, no. 607.) 20. And here, many things are to be noted: I. It is wrong to dismiss those who are uninstructed, so that they may better examine themselves. This, as Father Segneri (*Confessionis Institutio*, c. 2) calls an intolerable error, and rightly so: because such people, however much they strive, will find it difficult to examine themselves, as is fitting, and thus exactly as the confessor can examine them; and conversely, when they are dismissed, there will be danger that, frightened by the difficulty of examining themselves, they will be deterred from confessing, and will become hardened in their sins (ibid., see this section). Therefore, the confessor must himself inquire about the sins of such penitents, questioning them according to the order of precepts, especially if they are servants, coachmen, muleteers, soldiers, guards, innkeepers, and others of this kind, who often lead lives negligent of eternal salvation, and ignorant of divine things, far from sermons and churches. And this would be a worse error, if someone uninstructed were dismissed because of a lack of examination, who had previously omitted some sin out of shame, although confessions of many years might be required, because of the greater danger that is then present, namely, that if he does not return, he will perish (Ibidem). Nevertheless, the confessor must take care not to be bound so (1) To which pertains the knowledge of the penitent's state.

[*Latin ed. p. 508*]

I. It is necessary to question these individuals minutely; the confessor should inquire only about those sins into which they can easily fall, considering their condition and capacity. Indeed, if a penitent, even if uneducated, appears sufficiently instructed, and is diligent in confessing sins with their circumstances, according to his state and capacity (for a learned person is bound to examine himself in one way, and an uneducated person in another), then the confessor is not obliged to ask anything else (Ibid.).

II. It should be noted that it is better if the confessor examines the sins one by one as soon as the penitent recounts them, rather than postponing the examination until the end; because either the confessor easily forgets what he has heard, or the penitent, burdened with his grave duty, would be obliged to repeat what he has confessed (Ibid.).

III. It is an error for confessors who wish to form a certain judgment about the nature of a sin, whether it is grave or venial, to ask these uneducated individuals whether they considered it to be a mortal sin or a venial sin; for they often answer as the words suggest to them; and this we have witnessed through experience (as I have observed many times). But if the confessor asks again a little later, they answer in a way that is completely different from their first response.

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IV. It should be noted concerning the number of sins, which some are held to have committed, that since a certain number cannot be ascertained, the confessor should seek to understand the state of the penitent, namely his way of living, the time he devotes to other matters, the frequency of his association with a partner, and the place where he spends most of his time; and then he should inquire about the number, asking the penitent how many times he has committed the sin approximately, in a day, or in a week, or in a month, suggesting several numbers to him, for example, three or four, eight or ten, in order to see to which number he is more inclined. And if the penitent is inclined towards a larger number, it will be best if he is asked again about a larger number. But in this, the confessor should be careful not to form a certain judgment about the number; he should note the frequency in general, and make a judgment in a confused way, apprehending all the sins that are before God.

Some doctors say that concerning internal sins of habit, such as sins of hatred, wicked pleasures, and desires, it is usually sufficient to ask about the time during which the bad habit lasted; but this does not satisfy me in every case, because it is possible that someone is more focused on external matters, or spends time where there are fewer opportunities for wicked thoughts; another may be more attracted by a different passion; therefore, it is necessary to use general questions about his own activities, about the place, about his inclinations, etc., in order to form a judgment about the greater or lesser frequency of internal actions.

Furthermore, after two or three questions, the confessor should not be distressed if the judgment he makes seems to him to be too confused; for from complex and confused consciences, it is impossible to expect greater clarity.

V. It must be noted that, although general confessions are very useful, the confessor should not be overly strict in insisting that already made confessions be repeated (Lib. 6. p. 505). Therefore, says P. Se.

[*Latin ed. p. 509*]

Men are not obligated to repeat their confessions, unless in a case of manifest necessity, and where there is evident error. Relapses are not certain indications that no confessions have been made, especially if they have not occurred for some time, or if, before they occurred, the person has refrained from some sin. However, a different judgment must be made if the penitent relapses frequently, namely, within two or three days of making a confession, without in any way resisting temptation; for then it appears that there is a morally certain lack of sorrow and purpose.

CHAPTER II. Concerning the questions to be asked of uninstructed penitents.

21. Let not this my reader expect me to speak of all the doctrines pertain-

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ing to the precepts of God and the Church, as far as they are permitted or prohibited therein, for this has been sufficiently treated in the Moral Work. Here, I will only note the questions that a confessor should usually ask of uninstructed penitents, who are judged to have not sufficiently examined their own conscience; and a few other things that should be especially noted, which pertain to practice, rather than being treated speculatively.

22. Regarding the First Precept, ask the penitent whether he understands the mysteries of the faith; for if he is ignorant of the four principal mysteries, namely, that God exists, that He is the rewarder of good and evil, the mysteries of the Most Holy Trinity and the Incarnation, and the death of Jesus Christ, he will be incapable of absolution, according to proposition 64, promulgated by Innocent XI. Also, ask whether he knows the Creed, the precepts of the Decalogue, the sacraments, etc., at least in substance. But this, as the celebrated and learned Missionary, Father Leonard of Port Maurice, rightly observes in his mystical and moral Discourse, no. 26, the confessor should instruct uninstructed penitents in the mysteries of the faith, at least in the four principal ones; therefore, he adds as follows: It is not good to dismiss similar ignorant persons, so that they may be taught these things by others, because no other fruit is expected, except that they remain ignorant; therefore, it is expedient to briefly teach them the aforementioned principal mysteries, and also to encourage them to make acts of Faith, Hope, Charity, and Contrition, obliging them, however, to take care to have themselves perfectly instructed later about the other necessary mysteries concerning the precept. And the same author, speaking of those who neglect their own salvation in the city, who should be ashamed and indignant to be questioned about these matters, says that it is fitting for the confessor to say to them: "Let us together elicit these Christian acts, say with me: My God, because you are the infallible truth, and because you have revealed the holy Church to me, I believe whatever the holy Church teaches me to believe; I believe especially that you are one God, and three Persons; I believe the Son, with..."

[*Latin ed. p. 510*]

God is He who made man, who died on the cross, who rose again, and who ascended into Heaven, and from there will come to judge all; so that the good may enjoy the glory of Paradise, and the wicked may be tormented in eternal fire. Furthermore, it must be noted what Benedict XIV says in Constitution 42 concerning Christian doctrine, § 42 (see in Bullarium), namely that absolution must be denied to a penitent who culpably neglected to learn matters of faith that are necessary, both concerning the means and the precepts. But concerning matters of precept, he says that one who is ignorant can be absolved, if he sincerely promises to learn, with these words: "In such a case, the penitent can be absolved, if he acknowledges himself to be guilty of this vincible ignorance, and promises

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to take pains to learn what is necessary concerning the precept." 2. Has he practiced superstitions, or taught others, and if he has used the ministry of others, leading them to cooperate in his sin? Therefore, he must admonish the faithful that superstitions are never permissible, even if they are done out of charity, or in necessity. What actions are, or are not, superstitions, see in the work (book 4, number 3). 3. Has he ever, in confession, concealed any sin? And with this question, he must most carefully inquire of the faithful, especially those who rarely receive the sacraments, saying to them: "Perhaps some scruple from your past life is troubling you; take care now to confess well, say everything freely, do not be afraid, cast away all scruples from your soul, etc." With this question, the diligent confessor has freed many souls from sacrilegious confessions. But if he finds that sacrileges have been committed, in order to be certain of the number, he must ask how many times, from the time that he ceased to sin, he has confessed and received Communion? And whether, when he confessed or received Communion, he was aware of the sacrilege? It sometimes happens that some people confess sacrilegiously, especially in childhood, and afterwards forget about it; these are not bound to repeat confessions made in a state of ignorance. Also, he must ask if they knew that, with such confessions and Communions, they had transgressed the Paschal precept? It is advisable that this question about sacrileges be asked at the beginning of confession, so that, if it is asked later, and a sacrilege is found to have been committed, time will not be wasted unnecessarily in repeating the confession, which may be no different from previous ones. It is necessary to strive to make those who have concealed sins understand how great a sin it is, namely, to trample underfoot the Blood of Jesus Christ. 4. He must ask if he has satisfied for his penance? And if he has not, whether this happened because of forgetfulness, or because he did not want to fulfill it, or because he postponed doing it, or in order to have it changed? And whether, during that delay, he thought he was sinning? 5. Concerning scandals, has he led others to sin, or has he abused the ministry of others to commit sin? Has he cooperated in the sins of others? He must ask the sacristans if they have served wine to those who are accustomed to become intoxicated (book 3, numbers 69). Women...

[*Latin ed. p. 511*]

He will inquire whether, through words of little decency, jests, dances, laughter, or by intently gazing at someone, or by raising the tunic too high, or by exposing the chest, they have incited men to evil thoughts? Whether they have received gifts from them with the intention of leading them to sin? 23. Regarding this very matter of scandal, he can further inquire whether the penitent has cooperated with the sin of another; but the confessor must be very skilled in this, so that he may discern when the cooperation is formal, and when it is material. Formal cooperation

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occurs when one cooperates with the actual sin of another, as in the case of fornication, or when one cooperates with the evil will of another, as if one were to harbor a thief in one's house, which is commonly called "guarding one's back." Material cooperation, on the other hand, occurs when one offers one's services to the act of another, being indifferent to the person who abuses it for an evil purpose, such as providing wine to someone who wishes to become intoxicated; and this can be licit, provided there is a just and proportionate reason for the cooperation. This point, which is of great importance and requires much consideration, has been a considerable labor for me, as the matter demanded; therefore, let the reasons and resolutions contained in the work (Book 3, no. 63, and Book 4, no. 571) be observed. 24. Regarding the Second Commandment, he will inquire about perjuries, broken vows, and blasphemies. Regarding perjuries, he will inquire of the penitent whether they have sworn a false oath, and whether this occurred in court or outside of it, because to perjure oneself in court also harms justice, for which reason one is sometimes required to either retract the oath or make amends for the damage. 2. He will inquire about the manner in which the oath was sworn, whether by God, by the Saints, or by the soul; if one swore by conscience, or by faith, without adding the holy faith or Christ, it is most likely that one can be excused from perjury (Book 4, no. 435). It should be noted here that many uneducated people do not understand that to swear by the Saints is a grave sin, unless the damage to another is involved. And often, when angry with their children or servants, they say, "By God, by the Saints, by Christ, I will kill you if you do this again," without realizing that they are perjuring themselves, at least they do not realize it. 25. Regarding vows made, the confessor should diligently inquire of the penitent whether what they uttered is a true vow, because the common people often confuse desires or intentions with vows. To distinguish these, it will be helpful to ask them, as some are accustomed to do, whether they ever had the intention of binding themselves with a vow while in a state of mortal sin? Indeed, if uneducated people are asked this, they will easily deny it; it is better to ask whether, at the time they made the vow, they believed that they were committing a grave sin, or not, and whether they have since fulfilled it; and in this way, it will be better known whether they obligated themselves with a grave or a light vow. Once the confessor is certain of this, he will inquire whether it was a true vow, by asking whether they thought they would commit a mortal sin if they delayed, or whether they believed they were excused from it, because they had intended to fulfill it later. 26. Here it is helpful to note something about the dispensation of vows, and...

[*Latin ed. p. 512*]

The commutation. It is known that five vows are reserved, namely, those of religion, perpetual chastity, and the three pilgrimages to Rome,

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Jerusalem, and to Saint James in Galicien, which can only be dispensed with by the Pope, provided they are absolute, and not penal, and are subject to conditions (Book 4, n. 264). To these, add the vow of perseverance in a particular congregation or community, which is commonly made (as in the congregations of Saint Vincent de Paul and in our Most Holy Redeemer), which Pope Benedict XIV, in the Bull *Convocatis*, dated November 25, 1749, § 32, reserved to himself (loc. cit., n. 255). Other vows can be commuted or dispensed with by Bishops; who can delegate this power to others (loc. cit., n. 256); or by regular confessors (loc. cit., n. 257, see "Indeed"), or by other confessors by virtue of a faculty, jubilee, or other privilege granted to them. Speaking of commutation, I wish to warn the confessor not to be scrupulous regarding the reason, because any reasonable motive can be considered a cause. It is sufficient that the commutation of the vow entails less danger of transgression (loc. cit., n. 246, at the end); nor is it required that the matter substituted be equally valuable; but it is sufficient that it be morally equal. He should ask the penitent what works they are accustomed to perform, besides those required by precept, or to which they have a greater inclination, and in which they wish to change their vows. However, the commutation will be more secure in all kinds of vows if it is accompanied by frequent reception of the sacraments (loc. cit., n. 243). Note that perpetual vows can be well commuted into temporary ones; provided that there is due proportion; and thus real vows can be commuted into personal ones; and conversely, personal vows into real ones (loc. cit., n. 247, see "Note"). Speaking of dispensation, a more serious reason is required for this, namely, the great danger of transgression, great difficulty of execution, or lightness or imperfect deliberation with which the vow was made (loc. cit., n. 255 and 263). Nevertheless, it will always be commendable to add some commutation to such dispensations. These dispensations and commutations can be made outside of confession, provided that the faculty has not been granted under such a condition, as in the case of a jubilee (loc. cit., n. 257, see "Indeed"); but it is advisable to make them in confession. 27. Regarding blasphemies, he should be asked if he has cursed the Saints and with what words he used, whether he said "male," "vulga," "managgia," or "potta." Indeed, to say "managgia" is certainly mortal sin: "atta" in itself is venial, because that word does not contain an insult; but some uneducated people understand it to mean horror, and when they say "managgia," and then it should be taken as a serious blasphemy, and at the same time, the penitent should be instructed that such an utterance is not a blasphemy. To say "potta" in itself would be a grave sin according to the Spanish language, but in our language it is not a blasphemy, since it means nothing other than an interjection of indignation (Book 4, n. 426,

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see "Indeed"). Nevertheless, it will be good to require...

[*Latin ed. p. 513*]

The number [of sins] is increased, since the uneducated readily perceive a greater horror in this [act]. But since such a word is ambiguous and can be understood in a better sense, a penitent can rightly observe that, according to our language, it is not blasphemy, since our people do not certainly intend to utter it in a worse sense, that is, in the Spanish idiom; but he should also be warned, so that he may be on his guard against scandal, should he ever be present.

28. He is questioned [about] whether he has blasphemed on holy days, namely, Easter, Christmas, Epiphany, the Holy Sabbath, etc., which cannot be excused by a mortal sin, although many uneducated people clearly do not understand it in that way, but because it is doubtful whether they do or do not understand it, the matter should be investigated, and such blasphemies should be considered as they are before God.

3. He is questioned whether, after having uttered blasphemies against God, the saints, or holy days, he immediately added, "if I did it," or "except for God." Indeed, those uneducated people who say this in a single act, as the author of the Instructions for confessors of the regions rightly notes (Cap. 5, p. 141), are at least excused from a grave sin, because of ignorance, since they do not intend at that time to utter blasphemy; and although in my work (Lib. 4, n. 124, v. Sic quoque) I have said (4) that such an utterance is a true blasphemy, because for blasphemy, the intention of reviling is not required, but it is sufficient that the proposition is insulting to God or the saints; nevertheless, after considering the matter more carefully, it seems to me that it is more probable that it is not blasphemy, if the true meaning of each proposition is indicated by the last words, so that it can rightly be said that the aforementioned proposition, when taken as a whole, does not imply insult. But it must be said differently if, after truly reviling, as I have already explained, he were to say, "if I did it," etc.

29. It should be noted that when uneducated people say, "may your faith be cursed," commonly "maldiga la fede tua," it is not considered blasphemy, because they do not understand Christian faith, and the word "faith" can also be understood to mean human faith. Otherwise, it must be judged if they were to curse the holy faith, or the faith of Christ. Similarly, it is not a mortal sin to curse the dead, unless they are named or understood by the speaker to mean the souls in purgatory, or the dead in Christ, or the souls of the dead. I have already spoken about this point in my work (Lib. 4, n. 130): but because this is a point that has not been discussed by other authors, it is important to bring it up again here, so that it may be made clearer, and especially to respond to a certain anonymous person, who, in a certain letter to me, contradicted me, raising some objections. I say that a curse on the dead, in itself, is not blasphemy, neither in itself,

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nor by reason of those who pronounce it. It is not in itself, because the word "dead" properly is a privative term, which signifies people who have lost their lives, who now no longer exist; and in this context, the word "dead" does not imply either soul or body. Therefore, speaking strictly in philosophical terms, (1) The author indicates the first, not correct, edition of the Moral. Edit.

[*Latin ed. p. 514*]

He speaks ill of no one, nor does he inflict injury: he speaks ill of a thing which no longer exists. Someone might say: but here, the voice of the dead is heard, not as a privative term, but as an analogous term, which can be applied to both the soul and the body. I reply first, that he who says this is already speaking of the relation of the mind; but I am speaking of what the word "dead" itself signifies. But even taking it as an analogous term, I reply secondly, that under the word "dead," primarily and properly (as the philosophers say), only the body is meant, which alone can be called dead, since the soul is immortal. Only by analogy can the soul be said to be dead, namely, the soul of the dead, and that which was once the form of that body to which it gave life. But assuming that the word "dead" primarily refers to the body, and less directly to the soul, when someone speaks of the dead, speaking by themselves, they are understood to be referring to their bodies, not to their souls; in order to refer to the souls, it is necessary that he either explicitly in his mind refers to the souls, or at least that other words of the discourse denote the souls, as is the case in what is written in the Book of Maccabees (2:46): "It is a holy and wholesome thought to pray for the dead, that they may be delivered from their sins." Here, the word "pray" already indicates that the discourse is about the souls of the dead. Therefore, speaking by themselves, a curse upon the dead is not blasphemy. Now, let us see if blasphemy arises from the mental connection of those who utter it. And we say secondly, that blasphemy does not arise from the relation, because those who curse the dead ordinarily do not consider the souls of the dead themselves. Here, the Author of the Letter accuses me of not knowing how to distinguish between an abstract term and a concrete term. He instructs me that an abstract term is one that signifies the form, separated from the subject, such as beauty, whiteness, etc. A concrete term, on the other hand, signifies the subject with the form joined together, such as a beautiful man, a white sheet, etc. From this, he concludes that the word "dead" signifies a man who once consisted of a soul and a body, but now signifies a body and a soul separated. And from this, he concludes that when someone curses the dead, they are not only cursing their bodies, but also their souls. I reply. I do not say that when someone curses the dead, they consider them as abstract, that is, as forms without a subject: but I say that they do not consider the souls of the dead, which now exist. It is one thing to abstract, which is to consider a form without a subject; it is

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another thing to prescind, which is to consider a certain subject, separated from some circumstance or quality that can be considered. In short, the dead are no longer the same people who were when they were alive. Then they were persons composed of a soul and a body joined together; now, their souls and bodies exist, but they exist separately. Therefore, when the dead are cursed, it does not necessarily...

[*Latin ed. p. 515*]

The souls of those who are cursed are indeed cursed, unless these curses are expressed or understood in a special way. But let us concede to the author of the letter that he has attempted to maintain, namely, that to curse the dead is the same as cursing them as if they were living. I ask: Therefore, does he who curses a living person always sin mortally? All the Doctors agree, Cajetan, Soto, Molina, Grado, Azorius, Lugo, and others, with the theologians of Salamanca in *Restitutio*, book 4, chapter 27 and 28, from *Summa Theologica*, 2nd part, 2nd question, 76th article, that a curse upon one's neighbor is a mortal sin, provided it is formal, that is, (as Cajetan explains), when one wishes harm to one's neighbor, and a serious harm, which one imprecates; but not when the curse is merely material, that is, pronounced without a wicked intention. Indeed, in a living person, certainly both body and soul exist together. And one might ask, is it not mortal? Because he who curses a living person does not always intend to curse the soul of his neighbor, nor to inflict dishonor upon that substance in which the Image of God especially shines, but rather he sets it aside, and therefore does not commit a grave fault. Those who curse irrational creatures (as St. Thomas teaches in the aforementioned passage, article 2, and all agree) sin mortally and commit true blasphemy, if they consider them as creatures of God; but not if they set them aside, considering them as such, and curse them only according to how they are considered, and indeed, all of them are creatures of God. And St. Thomas also admits this distinction. Therefore, likewise, he who curses the dead, if he curses them in the measure that he curses their souls, sins gravely; but not if he sets them aside, and curses the dead without especially considering their souls. To say that all who curse the dead already intend to curse their souls as well, I and many other confessors have found to be false, by questioning penitents. Especially because those who curse the dead do not intend to harm them, but rather the living, to whom such curses are directed as insults. However, this is a matter of fact, and each confessor, by carefully questioning the penitent, can free himself from doubt. To say that, even if one intends only to curse the bodies of the dead, he cannot be excused from a grave fault, because of the respect that the Church has for the bodies of the dead, by offering incense to them, sprinkling them with holy water, and burying them with solemnity: I do not know how anyone can suggest this to himself. I do not wish to be pressed on this point. I will be brief, and I say that these

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functions are not indeed demonstrations of any religious worship towards the bodies of the dead, but rather certain ceremonies, which the Church also applies to the living. Therefore, if the honor due to the deceased is not greater than that shown to the living, neither will the insult be greater. But why (the author of the letter adds) do the laws punish more severely those who act cruelly towards corpses? I answer:

[*Latin ed. p. 516*]

They are punished, not for the sake of insult, but for the sake of the unjust mind, which is manifested in such an action, and which, even in the West, is subject to a fine for an infidel or heretic. Otherwise, those who, for the purpose of anatomy, dissect and mutilate corpses would be guilty of the same crime. Furthermore, what I conclude is that cursing the dead, in itself, is neither blasphemy nor mortal sin. And I find that three authors (already cited in this work) who are the only ones who have written on this point, have stated the same. Moreover, for the sake of my own greater peace of mind, I have written to several learned men in Naples, and also to three congregations of secular priests devoted to missionary work, where the flower of the Neapolitan clergy resides; and in every case, the responses were in conformity with my opinion. And Father Sabbatinus (a pious worker at that time, now the worthy prelate of L'Aquila) replied to me that all pious workers, both present and past, have felt the same. Furthermore, after I had submitted a certain letter on this point to the printers, an anonymous letter appeared in opposition, as I have already mentioned above, and I received it as certain that both writings had been transmitted to the Most Holy Pope Benedict XIV, who, after having taken up the matter for discussion with the Reverend Father Thomas Sergio, a pious worker, and the Consultors of the Holy Office in Rome (who have now passed away), also felt that cursing the dead was not blasphemy. And from another pious priest, I was subsequently informed that the same Pope, having learned Father Sergio's opinion, showed that he approved of it.

30. It is doubted whether cursing the world is blasphemy. The author of the Instruction itself denied it, but I have shown the contrary (Lib. 4, n. 129, see above); nevertheless, I said that if "the world" is understood to mean the world that is opposed to God, then it is certainly not a sin. But because it is likely that the uneducated do not intend it in this way, but rather as the creation of God, and from this they accuse themselves with great horror, I say that it is more likely to be considered a grave fault.

6. Cursing inanimate creatures, such as the wind, rain, years, days, fire, etc., is not blasphemy, unless such creatures are expressly referred to God, as if one were to say, "cursed be the fire of God," "cursed be the bread of God," etc. But to curse paradise, or the soul (because in the soul shines especially the power of God, and the divine image), there is no doubt that it is a grave blasphemy (Dict. n. 129).

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7. Cursing a demon is not a mortal sin, because one often curses it as the author of evil, and the enemy of God; therefore, it is venial in itself, setting aside the act of impatience, which, however, easily accompanies it (Ibid., see "Cursing"). But to say that the devil is holy, or omnipotent, is true blasphemy, and is grave; but it is a heretical error, if it were uttered with an understanding of the error, which, speaking regularly, is not presumed. But it is not blasphemy to call a demon...

[*Latin ed. p. 517*]

powerful, or wise, because he is so by nature; but this should not be said in order to give him honor; or to say in common parlance, "holy Dia..., holy Diana" (Book 4, n. 424). He should ask 8. how often and on what occasion he blasphemed; if it was in a game, or in a tavern, or during a hunt, and for how long has he been engaged in this vice? so that he may know if he is a recidivist, or if he is in the immediate vicinity of an opportunity, so that, repenting, he may be held accountable to make amends. 31. He should also ask if he blasphemed in the presence of his children, or servants; for then, besides the sin of blasphemy, he has also sinned by scandal. Finally, I add, with a certain learned author, that blasphemers are not excused from a grave sin because, due to the force of a bad habit, or a violent disturbance of the mind leading to anger, they did not realize what they were saying; for these who are accustomed to evil, although they may have less vivid awareness than others who have not contracted the habit of blaspheming, nevertheless always have that actual awareness sufficient for the act to be deliberate and gravely sinful. For if they did not commit this great evil, they would not experience any sense of this crime in their soul, as another would who had a conscience not so depraved; and from this arises the fact that in their minds, not even a trace remains of the actual awareness they had in the sin; or if some trace of awareness remains, it is so slight that, when questioned, they readily answer that they did not notice it: but a diligent confessor should not give them any credence in this; and he should not ask them whether they noticed it or not, but should accept all as true blasphemies, knowing that they themselves were aware that they were such. 32. REGARDING the THIRD commandment. Regarding the obligation to hear Holy Mass on holy days, he should ask the penitent if he has omitted Holy Mass several times? and if he noticed the omission? whether he doubted at the time when he could have heard Holy Mass? For often the penitent, postponing hearing Holy Mass to a late hour, although he finds that Holy Mass has been said, and he was absent, nevertheless, without just cause, he exposed himself to the danger of omitting it, and the unlearned do not accuse themselves of this. Also, if the penitent accuses himself of having omitted Holy Mass, he should be asked about the reason, whether it was due to necessity, as happens with servants who cannot leave the flock, or with mothers who cannot leave their children at home, or with

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spouses who cannot leave the sick, or with travelers who cannot separate themselves from their companions without serious inconvenience, such as being exposed to the danger of being robbed by bandits, or getting lost on the road if they travel alone, etc. (Book 4, n. 326.); or it happened to someone who did not have decent clothes in which to appear decently in the Church (ibid., n. 330, see Bena). 33. Regarding the servile works which are prohibited on holy days, he should ask if he worked on the holy day? and if he affirms it, he should be asked 1. how much.

[*Latin ed. p. 518*]

Then, what kind of work did he perform? For, according to the more common Doctors (Book 4, n. 305), those who are engaged in serious labor for two hours are excused; indeed, some admit of even more, at least if the labor is of a light nature, or if there is some notable reason present. If, however, the penitent confesses that he has sometimes worked more, and sometimes less, he will be asked how often he worked, judging whether the work was in a serious matter; but it is necessary to teach him that even working for a long time, secretly, and for solace of mind, and without compensation, is also a sin.

2. He will be asked, why did he work? Was it due to the custom of the region? Or out of necessity? It is true that poverty can provide an excuse; as the poor are often excused who, if they do not work, cannot support themselves or their families (loc. cit. n. 297); as are also those who repair clothes on a feast day, when they cannot do so on weekdays (Ibid.). But it is necessary to remove the uneducated from error, who falsely believe that they can work on a feast day, even if it is for the sake of their family, and without compensation. Many Doctors excuse those who work in order to avoid idleness, because of which they would be in a probable danger of sin; but this opinion is not admitted, except in a very rare case, in which they would be so vexed by a temptation that it could not be overcome except by working. Some servants or household members have sometimes been forced by their masters to work frequently on a feast day, and even to omit the Holy Sacrifice: these are held to leave such masters, provided they have not obligated themselves by a written agreement to serve; or provided that they are not afraid, with just reason, that by resisting, they would suffer a serious harm. And likewise, sons and wives can be excused in this way for being forced to work on feast days by their parents or husbands (Book 4, n. 296).

He will also ask, if on vigils, the Lenten fast, the sixth feria, and the Sabbath, they ate forbidden foods?

34. REGARDING THE FOURTH COMMANDMENT. If the children confess, they will be questioned.

1. If they hated their parents? Because then they have committed a double sin, namely, against charity, and against piety.

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2. If they did something serious against their parents' express command, and in a just matter, such as not leaving the house at night, not playing harmful games, not associating with bad companions, or with persons of loose morals, and similar things? I said in a just matter; because children are not bound to obey their parents in the choice of their state in life; indeed, parents would sin gravely if, without a just cause, they forced their children into the married state, or into the ecclesiastical or religious state, or if they unjustly prevented them from entering the religious life that they wished to choose (Book 4, n. 335, see also Book 5, n. 77).

3. He will ask, if they showed irreverence towards their parents, through actions, or imprecations, or serious insults publicly inflicted: such as calling them fools, beasts, madmen, thieves, sorcerers, scoundrels: or by expressing their gestures in a disrespectful manner, or by uttering other words with which they inflicted a grave offense.

[*Latin ed. p. 519*]

If they have shown them [the children] an example, however, to call the elderly, the ignorant, or the foolish "father" should not absolutely be condemned as a mortal sin, unless it gravely offends them. Note that when children have not given their parents due honor, they are obligated to restore the honor lost to them, by asking forgiveness from them, even publicly, before those in whose presence the children have sinned. However, some confessors, acting with insufficient prudence, impose on the children, as a penance, that when they return home, they kiss their parents' feet, and then they absolve them; but afterwards, they do not take care to fulfill this, and they commit a new sin. It is better to ensure that they ask for this forgiveness before absolution, but without imposing on them that they kiss the feet or hand; because those children, to whom this custom has never been familiar, find it very difficult to do. If, however, it cannot be conveniently demanded of them to ask for forgiveness before absolution, this should not be imposed as a grave obligation, but rather, it should be suggested as a recommendation, since it is presumed, at least in most cases, that the parents will forgive the children this obligation, so that the children do not again offend God.

35. If, on the contrary, the parents are confessing, they are questioned about [the following]: If they have been negligent in the upbringing of their children, in not taking care that they be taught Christian doctrine, that they attend Mass, that they receive the sacraments, that they avoid bad companions and immoral people? Also, they are questioned if they have been a scandal to them, by blaspheming in their presence, etc.? If they have not corrected them for their excesses, and especially if they have stolen anything? If they have allowed the betrothed of their daughters to enter their home? And especially if they have kept their sons in the same bed, or have allowed boys and girls to sleep together? Also, if they have failed to provide the

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necessary sustenance to their children? If they have forced their children, by unjust means, to enter into marriage, or to receive the sacraments, or to enter a religious order against their will? For in doing so, they sin gravely. But many parents do not feel any scruples about this, and thus, the ruin of their children, and the greatest detriment to the Church, often results. The confessors also question the masters, if they have corrected their servants when they blasphemed, or did not observe the Paschal precept, or did not attend Mass, or spoke dishonestly, especially during the harvest and grape-picking seasons; for the masters are obligated, when they can, to prevent the scandals that are committed at those times. They also question the men, if they have provided for their families? The wives, if they have incited their husbands to blasphemies, and if they have defrauded them of their marital due? Wives are often questioned about this, because they are often condemned for this alone, and this is the reason why even husbands are condemned, who, when they see that what is due to them is being denied, fall into a thousand crimes. Nevertheless, in this questioning, the words should be used with more modesty, as much as possible, for example: "Are you obedient to your husband even in matters pertaining to marriage?"

[*Latin ed. p. 520*]

Are you observing? Or perhaps you have some scruple that troubles you concerning marriage? But this question, for the most part, is omitted when dealing with wives who profess a spiritual life.

36. Concerning V, the confessor asks the penitent if he has desired any serious harm for his neighbor, or if he has rejoiced in his neighbor's harm. And it is noted that if someone has desired various evils for his enemy, e.g., death, infamy, poverty, etc., he is bound to declare all of them, and these are distinct sins in number, if he intended to effectively inflict them upon him; or if he specifically and in particular desired that these things should happen to him. Otherwise, as many Doctors [of the Church] probably say (l. 2, n. 50, v. Quær. 5), if he desired those evils under one general category of evil, namely, as a means to the ruin sought for the enemy. And here is the confusion of confessors, in discerning whether imprecations, which are often customary among the uneducated, have been mortal sins or venial sins. In this matter, it is necessary to first ask the penitent whether, in that act, he desired that those things should actually occur; but this is not sufficient to make a certain judgment, so it is necessary to then ask, if he cursed those outside his family, or those within his family, because in the latter (especially in children, spouses, or parents) a wicked intention is rarely present. Finally, it is necessary to ask about the reason why he uttered those imprecations; for if the cause was serious, or if strong anger intervened, it is then easier to determine that a wicked desire was also present.

Furthermore, it is not sufficient for the penitent to excuse the imprecations by saying that he only desired that they happen, and that he did not

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actually will them; for this is already sufficient that a serious fault was committed in that act, so the confessor then inquires about the number of such sins, and judges them at least as they are before God; and he does not absolve anyone who is found to be lax in this vice, unless he first repents, or gives some extraordinary sign of sorrow.

37. The confessor asks: 2. If he has inflicted serious injuries upon his neighbor, and whether he did so publicly; for then he is bound to publicly restore to him the honor that was taken away, by asking forgiveness from him, or by other signs of reverence; provided that he does not presume that he has completely remitted the injuries (Lib. 4, n. 984). Or that he refuses that public satisfaction, lest shame arise in himself, and the memory of the injury received be renewed in others; or unless it is feared that, through that act of satisfaction, hatred would be rekindled (l.c., n. 988). However, if the injury was secret, he is also bound to ask forgiveness secretly, according to the true opinion (l.c., n. 985). Nevertheless, it should be noted that injuries, by which the uneducated burden each other, although they may be serious in themselves, are not always serious among these kinds of people, as when they call each other thieves, sorcerers, or prostitutes; for these themselves do not often do these things, nor does the one who hears it believe it; unless they specify that they are referring to particular individuals, and accomplices.

The confessor also asks: if he has caused discord.

[*Latin ed. p. 521*]

He scatters chaff, and reports what he has heard from another. 38. Finally, he is asked whether he harbors hatred towards anyone, and whether he has denied them the common signs of friendship. This raises the doubt, discussed among Doctors, as to whether the offended party is obligated to grant forgiveness to the offender. The Salmantians (Treatise, Book 4, chapter 6, number 48) state that the offended party is indeed obligated to grant forgiveness for the injury, but not for public punishment, because this benefits the common good. Speaking speculatively, this opinion is true; but in practice, I have never been inclined to absolve those who claim to spare their enemies, but rather to ensure that justice takes its course, so that the wicked receive what is due to them for their actions; for I have never been able to believe that those who are sometimes burdened by sins love the common good and justice (not merely in relation to others who offend them, but solely in relation to their own offenders) to such an extent that their hearts are completely free from any desire for revenge. Therefore, it is easy, as many other Doctors say (Book 3, number 29, see "Licet"), for their apparent concern for the common good to be a mere pretext for concealing their desire for revenge. Nevertheless, I believe that those who are affected by injuries can be absolved, first, if they are willing to grant forgiveness, but claim to deserve compensation for the damages they have suffered; pro-

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vided that the offended party is not so poor that they are completely unable to pay. Second, if they grant forgiveness on the condition that the offender remains far away, because they have young children or elderly relatives to care for; or because the offender is so insolent and prone to quarrels that, due to their own weakness of character, they fear they would not be able to endure the offender's behavior. 39. REGARDING the VIth and IXth commandments. 1. They are asked about their thoughts, whether they have desired or taken pleasure in dishonest things; and whether they have fully considered and consented to them. Then, whether they have lusted after young women, widows, or married women; and what evil they intended to do with them. It should be noted that, generally speaking, rural people consider rape to be a greater sin than simple fornication; on the contrary, they are unaware of the wickedness of adultery. Therefore, when dealing with those who are accustomed to this vice, it is not advisable to warn them about the wickedness of adultery, since such a warning is likely to be ineffective, and will only result in the penitent sinner committing a double sin if they do not resist their carnal desires. Regarding these thoughts to which the penitents have consented, a specific number should be obtained if possible; but if not, it should be inquired how often in a day, week, or month they have consented to these thoughts. But if they are unable to explain this, they are asked whether they have desired any particular women they have encountered, or who have come to mind; or whether they have habitually thought dishonorably about a particular woman, never resisting these impure thoughts, and whether they have always desired her, or only when they saw her. Finally, they are also asked,

[*Latin ed. p. 522*]

Regarding the means employed to carry out evil thoughts; for, as we have said in the book (l. 2, n. 42), at that time, even if the means are indifferent, and internal malice is present, they are to be considered as external sins, or actions begun.

40. II. Concerning obscene words, they are to be questioned about: before whom, and how often, they have spoken in this manner, out of consideration for scandal; whether before men, or women, married or unmarried; before children, or adults? For girls and boys are more easily scandalized than adults, especially those accustomed to this vice.

2. What words did they utter? Did they, for example, mention the shameful parts of the body by their proper names? This is difficult to excuse as a venial sin.

3. Did they utter these words out of anger, or jest? For it is more difficult to excuse a transgression committed out of anger, and scandal is more easily caused. The confessor should be cautious about absolving those who relapse into this vice in indecent conversations; even if they say they uttered these words out of jest, they must first make amends, or show extraordinary

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signs of repentance.

4. Did they boast about any sin? For then three sins frequently occur together: a great scandal to those who hear, boasting about the evil committed, and complacency in recounting the sin. Therefore, they should be questioned about the specific sin about which they boasted (l. 2, n. 26).

They should also be questioned about whether they were pleased to hear others speaking dishonestly, and whether they then considered the precept of correction, thinking that it would be beneficial.

44. III. Regarding actions, they are to be questioned about what they have done. Have they committed the same sin with others? Where was the sin committed (in order to remove occasions)? How many times was the sin consummated, and how many acts were interrupted, separately from the sin itself? Did they consent to the sin many times before? For then, internal acts are interrupted, according to what has been said (l. c., n. 36), and it is then appropriate to form a judgment that the sins have been multiplied as many times as there have been acts of temptation, distraction, etc. As far as God is concerned, only the duration of time spent in sin need be inquired about.

However, if the evil deed was conceived two or three days before the consummation of the sin, and was not retracted within that time, then the sin is considered as one, see what has been said there.

Those who masturbate are also to be questioned about indecent touches separate from the act of pollution, and they are to be warned that these are mortal sins.

They are also to be questioned about whether they desired, or whether they were pleased, with the thought of copulation with a woman, or several women, or with a boy; for then they commit distinct sins.

Also, note that if someone were to lie with a woman between her legs or arms, in addition to the sin against nature, they would commit an initiated, or affective, act of fornication, as commonly stated by Filiucius, Tamburinus, Holzapfel, and Spina (l. 4, n. 466, v. Primam); hence, here are two sins of different species, one against nature in effect, and the other of fornication in affection.

Regarding the sins of spouses with respect to the marital debt, ordinarily speaking, the confessor is not obliged, nor is it fitting, to ask the wives whether they have fulfilled it in the most modest way possible, for example, whether they have...

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Whether servants are to be questioned by men about everything? Concerning other matters, silence should be maintained unless specifically asked. As for what is permissible and what is forbidden between spouses regarding the same debt, see what has been said at length in the work

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(Book 6, paragraph 900).

42. Regarding the seventh commandment, if someone has stolen something from another, should they be questioned? And from whom, and whether from one person or from many? Whether they acted alone or with others, and whether it was done once or multiple times? For if, in any instance, they took something of significant value, they have sinned mortally in that instance. However, if they took something of little value in each instance, then they have not sinned gravely, unless the amount taken in total reaches a grave level; provided that, from the beginning, they did not intend to accumulate a significant amount. But once the amount has reached a grave level, although they may not have sinned gravely in each individual instance, they are nonetheless obligated to make restitution for the full amount that constitutes the grave matter (Book 4, paragraph 533), at least for the last quantity that constituted the grave matter (ibid., at the end).

It should be noted that a greater amount of stolen goods is required to constitute a grave sin in the case of petty theft, especially if the items are taken from different sources; hence, it is said that in cases of petty theft committed multiple times, a double amount is required (Book 4, paragraph 530). And if a significant period of time elapses between these thefts, for example, two months, then the thefts are less likely to coalesce into a grave sin (ibid.).

Furthermore, those who consume fruits in the vineyards of others, provided they are not rare and of high value, may be excused from the sin of grave matter, if they do not carry away a large quantity (Book 4, paragraph 529, question 2); for in this type of situation, where things are readily available, a larger quantity is required to constitute a grave matter (ibid., paragraph 529). And for this reason, servants and maids can more easily be excused if they take food items from their masters, provided the quantity is not large and the items are not extraordinary (ibid., paragraph 545).

Those who cut wood or lead sheep to graze in communal fields, even if it is prohibited, should not be condemned for a grave sin; for such prohibitions are considered to be purely penal (ibid., number 529, section 1, and number 614, section 2, which are in the same place). The gravity of the matter is measured by the quality of the person who has suffered the loss; but this has been discussed more fully in the work (Book 4, paragraph 527).

When thefts are committed by children or by wives, a much larger quantity is required for it to be a grave sin; and these individuals are rarely obligated to make restitution for the full amount (Book 4, paragraphs 539 and 543).

43. Once the confessor has determined the penitent's obligation of grave penance, he should inquire whether the penitent is able to make restitution,

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even if it involves some inconvenience. And he should not grant absolution unless the penitent first makes restitution, even if the penitent exhibits extraordinary signs of merit (Book 4, number 682). For there are certain goods that cannot be recovered from the veins without great force and pain. Therefore, if restitution is not made before absolution, it will be much more difficult to make it afterward, as we have learned through experience. The penitent may only object,

[*Latin ed. p. 524*]

He would possess such a scrupulous conscience that there would be no room for doubt concerning him. I have said with some difficulty; for if, in restoring, he would be plunged into grave necessity, that is, if he would lose the state he justly acquired, then he may postpone the restoration, provided that the creditor is not in grave necessity. Indeed, even if the creditor is in grave necessity, it is probable that the debtor is not even obligated to restore, since he himself is also found in grave necessity; and by restoring, he would be brought into a state of extreme necessity. However, this is understood only if the stolen thing still exists; and only if the creditor has not been brought into that grave necessity primarily because of that theft (l. c. n. 703). In such a case, it is necessary to advise the penitent, when the restoration can be postponed, to restore gradually, little by little, or to perform some labor, or to offer some gift to the creditor from time to time.

44. It is not possible here to repeat all the doctrines concerning this matter of restitution, which is so widely known and understood. Therefore, let it be noted that this has been discussed more fully in the works. Here, I merely wish to note a few things that frequently occur and that are more relevant to practice.

And 4. When someone has committed theft in the company of others, in order to form a judgment as to whether he is obligated to restore the entire damage, or not, the following must be distinguished: if he was merely induced by his companions, and the theft would have occurred in the same way even without him, then he is obligated to restore only what he himself stole. But if they went to steal in agreement (with each other inciting each other), then each is obligated in solidum to restore (l. 4. n. 579. v. Quær.). Thus, in theory; but in practice, the uneducated, especially those who are not very scrupulous in conscience, can hardly be persuaded to restore what they have received from others: and, conversely, the lords themselves are content with a portion of what they have received, precisely because, if they are obligated to restore the whole, they easily neglect to restore not only what others have received, but also what they themselves have received. Therefore, the confessor must make it known to him that he is obligated to restore, without explaining the amount, and he must restore as much as his conscience dictates (lb. in fin. et Auct. Instruct. pro confessar. pagorum, c. 8.).

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2. It must be noted that no one is obligated to restore the damage caused if he derives no benefit from it, if he did not even foresee that damage (Lib. 4. num. 613. in fin.); or unless he has been fined by a judge's sentence to make amends for the damage (Lib. 1. n. 100. in fin. et l. 4. n. 554. in fin.).

3. If the theft is uncertain, that is, if the person to whom the damage was caused is uncertain, the penitent is obligated to restore, either by offering Masses, or by giving alms to the poor, or by making pious donations (Lib. 4. n. 89. in fin.); and if he himself is poor, he may apply it to himself or his family (l. c. n. 672). But if the person is certain, the restoration must be made to him; therefore, it is surprising to find so many confessors unlearned, who, when it is known who the creditor is, do not instruct the penitent—

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They impose that, concerning the matter to be restored, alms be given, or that Masses be celebrated. In this case, I defended the opinion that the penitent must be held to restore, because the thief, in all cases, even accidental ones, must render to his lord what is due, and I could not agree with the contrary opinion. I stated only (Book 4, no. 534, Question II) that if the thefts were minor, even if united to a large sum, and even if the owners were certain, but different, then I would excuse from grave sin the one who wished to restore to the poor, for the reason given there; and even from venial sin, if a reasonable cause were present, as if the restoration could not be made to the owners without notable inconvenience, or if some poor people were in such necessity that the owners would be presumed to consent to the restoration being made to them (loc. cit. no. 595, at the end). If someone has committed fraud against many citizens, but with uncertain owners, through minor thefts, e.g., by selling wine, oil, etc., with a measure or weight deducted, I maintain that he must restore to those very citizens (either by reducing the price, or by increasing the weight or measure), and not merely to the poor, as some allow; although, as I said above, if he gave it to the poor, he would not commit a grave sin, and not even a venial sin, if a just cause were present (Dict. no. 595). 4. It should be noted that if someone has taken or retained something that belongs to another, with the presumption that if he asked the owner for it, he would gladly give it to him, he is not obligated to make restitution (Book 4, no. 700, see Question I). 5. Nor is he obligated to make restitution who gave a purely gratuitous gift to his creditor out of forgetfulness of his debt (loc. cit. no. 700, see Question II). It must be understood that, for a penitent to be held to restitution under grave guilt, when the thing taken has already been consumed, and he has not become richer, it is first necessary that there be a grave internal fault against commutative justice (Book 4, p. 550). Furthermore, from his side, it is required that there be an effective external action, or influx of damage (loc. cit. no. 584), and moreover, that this influx be complete or seriously unjust (Book 4, no. 551); and that there be moral certainty that he was

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such (loc. cit. no. 562). This is what pertains to acceptance. Regarding the retention of a thing, if the penitent has a probable opinion of legitimate possession, he cannot be obligated by the confessor to make restitution (Book 4, no. 35); indeed, he who began to possess something in good faith, after making due inquiry to discover the truth, is not obligated to restore anything, unless it is certain that a theft has been committed that affects the person next in line, as I have shown in many places. But if the obligation of restitution were certain, and the penitent remained in good faith, if the confessor certainly foresaw that correction would not be beneficial, then he should omit it, so that what is a material sin does not become a formal sin to the detriment of that soul, as the Doctors say (Book 6, no. 614, see Inferior II); see the statements above, chapter I, nos. 8 and 9. Finally, with regard to the obligation of restitution by contract, one should consult others, in books.

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To study, and afterwards to decide. It is also necessary to note here that, if any contracts, having been in use for a long time, are found in a certain region where missions have been held, the confessor should not condemn them, unless, after examining all the circumstances, he finds them to be so. For, indeed, many contracts may appear, at first glance, to be usurious or unjust, but, after a more thorough examination of the matter, they may not be considered as such. Concerning the prescription of property, see the book (Lib. 4, n. 504).

44. Regarding the eighth precept: The penitent is asked whether he has slandered anyone? And if he has done so, whether he has committed a false sin by imputing a false accusation, or a true sin by revealing a true fault? And if the sin is true, whether it was concealed, or made public in some place, by word of mouth, or by a judge's sentence? He is also asked whether he slandered before one person, or before many; and before how many? Also, whether he revealed the fact as something he knew himself, or as something he heard from others? Concerning the restitution of reputation, if the fault that has been revealed is false, the one who spread the slander is obligated to retract it. But if the fault is true, he must seek to repair the damage caused by the slander in the best way he can, without lying. For example, he can say: "I was mistaken, I was deceived, I was wrong." Others also admit that it can be said, "I lied, I equivocated," since all sin is a lie, as it is said in the Scriptures. I am accustomed to give the advice that they should say: "This came out of my head," commonly (me l'ho cacciato di capo), even equivocating, because all words proceed from the mind (for which the head is taken as the organ). But if, at any time, the restitution of reputation is likely to cause greater damage than the benefit it would bring to the one who was slandered, because it is presumed that the matter has passed from the memory of men (as is presumed when the slanderous

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accusation occurred a long time ago, and no further mention has been made of it since), then it is better to seize opportunities to praise the person who was marked by the slander for some of his virtues, in order to place him in the good opinion of others, than to recall past events by means of this restitution of reputation. The confessor should see to it that such compensations for slander, when they can be done with ease, are made before absolution, because afterwards they are difficult to accomplish; although these are less difficult than the restitution of money. Finally, it should be noted that, when a person reveals a fault of a neighbor, it is properly called defamation, and is a sin, when the intention is, as St. Thomas says (2.2. q. 73. a. 2.), to denigrate the reputation of another, and not when the intention is to avoid some damage, such as to inform parents, a lord, a prelate, so that the guilty party may be reformed, or to provide for the safety of others. But only if the damage is of great importance, or is far less damaging than the slander. This should be observed as it is stated in the work (Lib. 4, n. 968).

46. Regarding the duty of restoring to someone the honor that has been taken away from him, because of the insult inflicted upon him, this has already been discussed in precept V, n. 36. In this.

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In the eighth precept, the Doctors also discuss rash judgments. Many uneducated individuals accuse themselves of having felt something wrong. It is important to note that: 1. If there are sufficient reasons to judge something as wrong, the judgment is not rash, but just, and therefore, it is not blameworthy. 2. Often, these are not judgments, but suspicions, into which masters and heads of families are sometimes led, in order to prevent some sin, for example, to prevent servants from becoming unruly, or daughters from sinning by associating with men, etc. They should only warn them about this, and not share such suspicions with others unnecessarily. 47. It would be appropriate to speak about the precepts of the Church, but regarding the obligation to attend Mass, and the prohibition of labor on holy days, we have already said enough above in numbers 32 and 33. Regarding fasting, we recall three things for the confessor's consideration: 1. Not all labors excuse one from fasting, but only those that cause great bodily exertion (Book 4, number 1044). 2. Workers are excused from fasting only on those days in which they are actually working, or when they expect to work the next day, and cannot eat except the day before (Ibid., number 1044). 3. It is not sufficient to satisfy the fast by not eating breakfast and dinner, or by having a lighter supper than usual, as many falsely believe; for fasting implies taking only one meal in the day; and in the evening, only a simple collation of eight ounces is permitted, according to common custom, or up to ten ounces may be allowed to those who have needed a larger quantity due to greater exertion exceeding the ordinary (loc. cit., number 4025). However, the poor, for whom there has not been sufficient

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food, and who cannot be sustained by a simple late supper, are excused (loc. cit., number 4033, second paragraph). If, however, these people had sufficient food in the evening, the Doctors say that they are bound to fast, by postponing supper until midday; but many others deny this, because such a fast would be an extraordinary burden for them. The things that are contained in the work should be noted (Book 4, number 1034, towards the end). After the confessor has conducted such an examination of the penitent, how he should then proceed, in order to prepare the penitent for contrition, and to add penance, has already been explained (numbers 40 and 44). But above all, it should be noted that such an examination should not be neglected, because it is discovered that the majority of confessors are lacking in this point. CHAPTER III. On the questions to be asked to people of different status or condition, who are somewhat careless in matters of conscience. 48. Here it is noted that, regarding the obligations proper to one's own state or

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It is not always sufficient for a confessor merely to ask the penitent whether he has fulfilled his obligation, especially if the penitent appears to be of little concern for his conscience, or if the confessor has a reasonable suspicion that he has neglected his duties; in such a case, it is necessary to question him in particular, at least concerning his most important obligations.

49. And first, if he is a priest who comes to confess, he is asked: 1. Whether he has fulfilled his canonical hours and the obligations of Mass, or whether he has neglected to celebrate them for a long time? 2. Whether he has engaged in business? 3. Whether he celebrates Mass too hastily? For if he completes it in less than a quarter of an hour, he cannot excuse himself from a grave fault, even if the Mass is for the repose of the dead, as many Doctors teach (l. 6, n. 400). For within such a short space of time, it is not possible to complete the Mass without great negligence of words and ceremonies; at least, it cannot be celebrated with the gravity and decorum that befits such a sacrifice. Furthermore, a Mass celebrated too hastily also gives rise to a grave scandal to the laity, to whom, as Bellarmine says (Ibid.), such priests do not seem to believe that the divine Majesty of Christ the Lord is truly present in the Mass.

50. Moreover, it will not be improper to ask priests whether there is a great shortage of confessors in their own country? For in that case, a priest might be held to provide someone suitable to hear confessions, as we have demonstrated with valid reasons (l. 6, n. 625), to which we add the teaching of St. Thomas, who (Suppl. qu. 34, art. 1) says that God instituted the order of priests in the Church to minister to others in the sacraments; and therefore (the words of the Saint), He established order in it, so that they might indeed administer the sacraments to others. Therefore, the priest

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is called the light of the world, the salt of the earth, and the helper of God. Since the purpose of the priest is to administer the sacraments, how can he excuse himself if he sees his fellow citizens lacking confessors, and therefore many of them remain in sin, with great danger of damnation, and he himself frustrates the purpose for which God raised him to the priesthood, by neglecting out of laziness to become suitable for administering the sacrament of penance, which, except for baptism, is most necessary for the salvation of souls. The words of the Lord are most terrible against those priests who care little for the salvation of their neighbors. "If you do not warn the wicked man, that wicked man shall die in his iniquity, but I will hold you accountable for his death" (Ezekiel 3:20). If that priest excuses himself by citing his own insufficiency, let him hear St. Francis de Sales, who calls the false humility of those priests who neglect the salvation of souls, under the title of their weakness. "This," says the Saint, "is a malicious humility, and a disguised love of self, which, under this fair pretext, seeks its own."

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It seeks to conceal negligence. It adds that when God bestows a certain talent upon us, He justly asks us to exercise it; therefore, he who uses it and obeys, demonstrates greater humility. The proud, indeed, have reason to avoid undertaking any task, because such individuals trust in themselves. The humble, on the other hand, are magnanimous, because they do not consider their own strengths, but trust in God, to whom it pleases to manifest His omnipotence in our weakness; hence, it concludes that the humble can undertake everything.

51. Secondly, if a confessor is added, and there is a prudent doubt about his suitability, he is asked whether he has given sufficient attention to the task, and whether he continues to study. For, as we said in n. 48, at the End, to properly perform the office of hearing confessions, it is not always sufficient to have studied. Also, did he absolve those who remained in the proximate occasion of sin, or were they recidivists, and did they not exhibit extraordinary signs of their disposition? If such a confessor has ever incited a penitent to impurity, he is asked whether he knows that he cannot perform the Sacred rite, since a perpetual incapacity has been imposed upon him by the Most Holy Pope Benedict XIV, and reserved to the Pope, which, as we have shown in the Work (Lib. 6, n. 705), applies before any judgment is rendered. Does this apply even to the ignorant? Observe what is said in the same Work at the cited passage.

52. Thirdly, if a parish priest is added, he is asked:

1. Whether he attends to the necessary corrections regarding his parishioners? Specifically, regarding those who are held in hatred by some, or who behave scandalously, or who frequent the homes of betrothed couples. And speaking of this matter, such a parish priest is strongly warned not to

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accept mutual promises of marriage, except shortly before the marriage is to take place, as prudent parish priests do; otherwise, that entire time until the marriage will be a time of sin.

2. Whether he diligently ensures that his parishioners, without exception, fulfill the Paschal precept? How many people do we find in parishes, especially those of greater standing, who have, for many years, neglected to fulfill the precept, without the parish priest having admonished them, and having employed suitable means for their repentance?

3. Whether he has administered the sacraments (especially the sacrament of Penance) in the event of imminent death, or when requested by himself (l. 6, n. 623, v. Resp. 2, and Resp. 3)? I say by himself, because, when he is able, he does not fulfill this by administering through others (Lib. 5, n. 127, v. Hinc).

4. Whether he has provided the due assistance to the dying.

5. Whether he has given sermons on Sundays? Indeed, a parish priest, when not legitimately hindered, is not excused from a grave fault by the prelates if he omits to preach for a continuous month, or for three months intermittently within a year (Lib. 4, n. 269).

6. Whether, having a substantial benefice, he has made the due charitable contributions.

7. Whether he has attended to instructing in Christian doctrine the children, and the rural folk, regarding the mysteries of the faith, and the means to salvation? Specifically, whether he instructs...

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It is necessary to inquire diligently concerning the sorrow for sins required for obtaining absolution; and also concerning the children regarding the Holy Communion, at the age at which they are already fit to receive it, namely, ordinarily speaking, from the age of ten to twelve, or at the most, to fourteen (Book 6, paragraph 301, see here). For it is known that Saint Charles Borromeo instructed his parish priests to provide suitable children for Holy Communion as soon as they reached the age of ten (Ibid.). But some parish priests even refuse to administer the Eucharist to children who have reached the age of twelve, and why? In order to avoid the trouble of instructing them.

8. He should inquire diligently whether, for human reasons, written testimonies are easily and readily provided by the candidates, so that they may receive the orders? For in this matter, it is necessary that the parish priests should not be content with merely a negative knowledge, but should have a positive knowledge of the candidates' probity and the frequency of their reception of the sacraments; and therefore, they are particularly obligated to inquire about all of these things. Sometimes, candidates are found to be burdened with a thousand faults, who have received Holy Communion

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scarcely once in the year, or even who have omitted the Paschal precept, and then they boldly present testimonies from the parish priest concerning their good conduct and the frequency of the sacraments. These very individuals then receive the orders, and become a scandal to the people; and concerning all of their faults, the parish priest certainly must give an account to God, for the Bishops trust the parish priests in this matter: but more diligent Bishops do not readily believe the testimonies of the parish priests in this very serious matter, from which the salvation of the people depends.

53. In Quarten, if an archbishop, aware of his own negligence, is present, the confessarius should inquire:

1. Whether he uses due diligence (besides examining their knowledge) to ascertain the firm probity of those to be ordained? For, as the sacred canons, the Council of Trent, and the Apostle prescribe, he must give very little credence to the testimonies of the parish priests, which, as we have said, are mostly either false or suspect.

2. Whether he approves of confessors who are sufficiently experienced in morals and doctrine? Otherwise, they will bring more harm than benefit.

3. How does he manage the income of the benefice, and to what purpose does he apply it? For, as we have shown (Book 4, paragraph 492), after providing for his own honest sustenance, the remainder must be distributed to the poor.

4. How does he fulfill the obligation of residence? For even the three months granted by Trent do not allow him to leave his diocese, as Pope Benedict XIV declared, if he were to absent himself for a frivolous reason or for mere pleasure.

5. How does he strive to inquire into the scandals of his flock, so that he may remedy them in the best way possible, even seeking the assistance of the secular arm, if it is necessary?

6. He should be asked how he conducts himself in exhibiting a good example? Certainly, a prelate is especially obligated to provide an exemplary model; otherwise, how can he correct his clergy? For example, if he himself were to associate with women, or frequent forbidden games, would he not be giving a bad example?

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54. Fifthly, if a nun is being questioned, she should be asked: 1. Whether she has committed any fault concerning her vows, especially concerning poverty, by receiving or giving anything without permission? 2. Whether she has fulfilled her canonical hours? The opinion that nuns are not required to recite the Divine Office in private is not sufficiently probable, as we have shown (Book 5, n. 441). 3. Whether she has fostered any dangerous affection towards anyone, for example, if there have been at least words or

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letters of a loving nature? And in such a case, the confessor must be firm in denying her absolution; for in such relationships, even if the intention is not positively evil, there is always a danger: at least there is scandal, and a bad example for others (Diana, part 5, treatise 7, rule 21 and 22). 4. Whether she harbors any hatred towards her sisters. 5. If a nun performs any office, she should be questioned about it in particular; for example, the gatekeeper, whether she brings letters or news that arouse suspicion? The doorkeeper, whether she leaves the door open carelessly, with the danger of scandal to the nuns or others? The Abbess, whether she uses due diligence when men enter or stay in the monastery, or whether she connives at new abuses? It should be noted that, although individual nuns may sin lightly by transgressing the rule slightly, superiors, who fail to prevent it when they can, sin gravely by allowing a relaxation of observance (Book 5, n. 43). 55. Sixthly, if a judge is being questioned, he should be asked: 1. Whether he has been a respecter of persons? 2. Whether he has expedited cases? 3. Whether he has shown due diligence in judging, or has he neglected it, or has he given judgments influenced by some affection towards one of the parties? 56. If a notary is being questioned, he should be asked: 1. How he behaves in taking depositions? 2. Whether he has omitted suggestive questions? 3. Whether he has diminished or increased the testimonies of witnesses? 57. Seventhly, if a physician is being questioned, he should be asked: 1. Whether he has been sufficiently versed in the study of medicine and in the practice of healing? And whether he applies himself (as he is bound to do) in more difficult cases that arise? 2. Whether he has granted permission to anyone to eat meat for a human reason, without a just cause? 3. Whether he has applied any dangerous remedy to a sick person who is not yet considered to be near death (l. 4, n. 46; Book 5, n. 291)? 4. Whether he has caused remedies to be obtained from some pharmacist who is his friend, but whom he knows to be somewhat unreliable, or inexperienced, or who sells ineffective medicines? 5. Whether he has attended to the care of the poor, if he receives a salary for it; or without a salary, if the poor are in great need (Trull., t. 4, l. 4, c. 4, dub. 14, in fine). 6. Whether he has taken care to remind the sick nuns to confess at the proper time, according to the papal decrees? On this point, we have spoken at length in several places in this work (Book 4, n. 482, and better, Book 6, n. 664), where it is said that Innocent III ordered physicians not to allow any sick person

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They should not attend to the sick, unless that one has first confessed; and St. Pius V, confirming such a precept, furthermore ordered that the physician should leave the sick person after the third day, unless he knows that the person has confessed; likewise, he commanded that all physicians, before assuming the degree of doctor, should swear to observe this precept;

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and this was commanded to all colleges. But it is doubtful how such a precept, and oath, should be understood. Many Doctors held that it proceeds from the fact that illness is dangerous; or at least, when it is doubtful whether it is dangerous; and in this sense, they said that the Bull of St. Pius had been received. But the more common opinion is that the aforementioned precept, although it does not obligate in any slight illness, should not be understood to apply only to illnesses that are actually dangerous, but also to those which are prudently judged to be able to become dangerous in the future. The reason is that Innocent commands that the physician should urge the sick person to confess before the physician undertakes the burden of his care, so that the sick person (thus speaks the Pontiff), warned by confession, despairing of his health, may more easily fall into the danger of death; therefore, he intends to ensure that the sick person confesses before the illness becomes mortal. This opinion seems true to me. Nevertheless, contrary to this, is the practice of physicians, even those with a timid conscience, who do not usually urge the sick to confess, unless the illness has probably already become dangerous. Nor do they consider that they are sinning against the oath sworn according to the Bull of St. Pius, adhering to the doctrine of many authors (l. 6. no. 664. v. Circa autem.), who believe that the aforementioned oath does not obligate, except for that part for which it has been accepted by custom. However, there is no doubt that those physicians who omit to urge the sick to confess, when the illness is already dangerous, sin mortally. Oh, how miserable it is to see so many sick people (and especially those of high standing) being led to the very brink of death, to give account of their lives to God at a time when they are almost lifeless, when they can scarcely utter words, scarcely hear others, scarcely comprehend the state of their own conscience, and the pain of their sins, and all this happens through the fault of those physicians, who, lest they displease the sick, or their relatives, do not inform them of the danger; indeed, they flatter them until they are completely despairing of life. Therefore, when a physician with a negligent conscience arrives, the confessor should especially question and urge him, not casually, but with fervor, about this obligation to inform the sick person to confess, at least when he notices that the illness is already serious, or doubts whether it is already serious, as the Doctors commonly say, in which they do not disagree. I say with fervor; for from this point hangs the spiritual salvation, not only of the penitent physician, but also of all those sick people who are under his care. 58. Eighthly, if the pharmacist arrives, he will be asked 4. Whether he has...

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Remedies employed to procure an abortion. 2. Whether he has sold one medicine for another, and at a higher price than the item was worth (Book 4, paragraph 824). Here, add that Gregory XIII, in his Constitution 29, for-

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bade all associations between pharmacists and doctors, or surgeons. 59. Now, if a merchant is present, he will be asked: 4. Whether he has cheated in weight and measure; 2. whether he has sold goods for a price exceeding the maximum price; especially by giving goods on credit, when the buyers were secure, and he himself would suffer no loss: whether, however, the price can be increased by selling on credit, because such is the current price in credit transactions according to common estimation? And whether goods, which are sold in small quantities, can be sold at a higher price? Observe the doctrines noted in the book (Book 4, paragraph 809). 60. Tenthly, if a tailor is present, he will be asked: 4. Whether, on holidays, he has worked for a noticeable period without an extraordinary reason, in order to complete garments and deliver them to his employers (Book 4, paragraph 303, concerning Tailors)? 2. Whether he has fulfilled the fasts prescribed by the Church? For tailors are least excused from fasting because of the labor of tailoring (Book 4, paragraph 1044, concerning Barbers). 3. Whether, if others have entrusted him with the purchase of cloth, he has demanded a higher price, under the pretext that the merchant has given him the cloth at a lower price because of a particular friendship? If that part of the price had truly been given to him as a gift, then he may demand it, provided he has shown due diligence with other merchants, or he certainly knows that others do not commonly sell that item at a lower price (Book 4, paragraph 826, concerning Caution); however, this must be absolutely certain, otherwise he may demand nothing more than what he has received. 4. Whether he has retained scraps or remnants of clothing, which he unjustly retains, unless there is the consent of the owners, or unless they have unjustly deducted something from the price due, even the lowest commonly estimated price? 5. Whether he has had an opportunity for proximate sin arising from the rules for properly fitting women's garments by measuring their bodies (commonly called "taking the measure"), or from fitting garments to women, which cannot be done without the presence of the women themselves, and whether this would be an opportunity for the tailor to fall into wicked pleasures or desires, as often happens with men of bad conscience? 64. Eleventhly, if a female seller or prostitute is present (understand these to be those to whom masters entrust the sale of goods), she will be asked: 4. Whether she has retained any part of the price collected from the buyers? We hold (Book 4, paragraph 825, concerning Questions) that the female seller cannot retain anything exceeding what is due to her, even if she delivers to the master the price designated by him, because such a determination is made so that the goods are not sold for a lower price, but not so that the prostitute retains what remains to herself; and this holds true even if the master has designated a place where the goods are to be sold, and the prostitute, using due diligence there, subsequently sells them

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elsewhere for a higher price.

[*Latin ed. p. 534*]

He has stated: Indeed, we also say that she cannot retain anything superfluous, but only that which she is able to manage, given that extraordinary labor; for everything benefits the Lord. We make exceptions (ibid., vol. 1, p. Bene autem). 1. If the saleswoman has improved the item, and therefore sold it for more than the item was previously worth. 2. If the saleswoman agrees with the owner not to sell it to anyone else, unless the price is determined by him: and this, whether expressly or tacitly, as if the owner had not assigned any compensation for her labor. 3. If, what remains, is of little value, so that it may be presumed that the owner will forgive it. 4. If the saleswoman, having exercised ordinary diligence, buys the item for herself at a price offered by others, and then sells it for more. The same must be said if someone entrusts you with buying an item at a set price, and you buy it for less; then you can demand nothing more, unless you have used extraordinary effort to save on expenses; or if you bought the item in your own name, assuming the risk; however, this is understood if you have already exercised moral diligence, and have not found anyone from whom you could have bought the item for less (ibid.). 62. Twelfth, if a barber is present, he is asked whether he cuts hair on holidays, and whether such a custom exists? Conversely, if he is unwilling to do so, where such a custom has already been established; or if men cannot be shaved except on holidays, because on other days they must devote themselves to labor in order to support themselves and their families. Furthermore, he is asked whether he styles women's hair, according to the wicked practice invented by Satan in this time. Ordinarily speaking, I believe that this is the closest opportunity for men to sin mortally with shameful pleasures, or at least desires; therefore, I say that it should not be permitted to anyone who has not had the contrary experience within himself. If, however, someone has, for a notable period of time, been free from sin in such an action, he cannot be condemned for mortal sin; but even so, the confessor should, as much as possible, remove him from such a profession, which certainly contains a danger. From this, I do not wish to discuss another matter, whether women can, or cannot, safely ask men to style their hair. I hear that they do this in many places: and they confess, and receive Holy Communion, as they and their confessors testify. At the very least, the confessor should instruct them not to use any man who is younger, from whose actions they have perceived that he is acting maliciously. Furthermore, I believe that women of purer conscience should not use men, but should be content with women who style their hair, in the best way possible.

[*Latin ed. p. 535*]

CHAPTER IV. How a confessor ought to behave with those who are in

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imminent danger of sin.

63. The greatest care of a confessor should be to conduct himself properly with those who are in imminent danger of sin, whether they are given to habitual vices or are relapsed sinners. These are two great pitfalls into which the majority of confessors fall, and fail. In the following chapter, we shall speak of habitual sinners and relapsed sinners; here, we speak of those in imminent danger. It is certain that if men would strive to avoid occasions, a great part of sins would be avoided. Satan gains little when occasions are removed, but when a man deliberately puts himself in a near occasion, he almost always and very frequently sings the song of the enemy's victory. An occasion, especially in matters of impure pleasures, is like a net that draws one to sin, and at the same time blinds the mind, so that a man sins without realizing what he is doing. But let us proceed to practice. An occasion is first divided into voluntary and necessary. A voluntary occasion is one that can easily be avoided. A necessary occasion is one that cannot be removed without serious harm or scandal. Secondly, it is divided into near and remote. A remote occasion is one in which a man rarely sins, or one that is repeated everywhere. A near occasion, speaking generally, is one in which men commonly fail most often. A near occasion by accident, or relative, is one that, although with respect to others it may not be a near occasion, is a near occasion with respect to someone, either because this person frequently falls in such an occasion, or because it can prudently be feared that he will fall, due to the known experience of his weakness. Indeed, the Fathers hold that there is a near occasion only when a man almost always, or very often, falls; but the more common and truer opinion teaches that a near occasion is one in which someone frequently sins (l. 6, n. 452). However, it must be noted that just as sometimes an occasion that is generally near with respect to others may be remote with respect to a very pious and cautious person (Ibid.), so conversely, certain occasions that are generally remote with respect to others may be near with respect to someone who, due to the experience of relapses and due to a grave inclination to a certain vice (especially if it is shameful), has become very weak and easily led astray; and then this person will be obliged to remove not only near occasions, but also those remote occasions that become near with respect to him.

64. Furthermore, the following are near occasions:

1. He who keeps a woman in his own house with whom he has often had relations.

2. He who frequently breaks out into blasphemies or frauds in a game.

3. He who has often become intoxicated or fallen into quarrels in a certain

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tavern or house.

[*Latin ed. p. 536*]

Moreover, they cannot be absolved unless they remove the occasion, or at least promise to remove it, according to the distinction that will be made in the following number. And likewise, he cannot be absolved who, by entering a certain house, although only once a year, has always sinned there; for such an entrance is already very close to an occasion. Nor can they be absolved who, although they do not fall into sin when presented with an occasion, nevertheless cause grave scandal to others (Lib. 6, n. 452, verse: "From these things"). Some Doctors (Ibid.) add that absolution is also to be denied to him who does not remove an external occasion, if it is joined with a vicious habit, or a great temptation, or a vehement passion, even though he has not yet sinned in that occasion; for he will easily be able to sin if he does not remove himself from the occasion. Hence, they say that if a certain maid were ever tempted by a young man, and she knew herself to be easily led astray, she is bound to leave that house, if she can, otherwise she would rashly presume to be safe. And here, confessors must be careful not to allow betrothed couples to visit each other's homes, and not to admit betrothed men into the homes of the women, because it rarely happens that such betrothed do not fall, at least in words, or in obscene thoughts, in such an occasion, since all the glances and conversations between betrothed are incentives to sin; and it is morally impossible for them to converse with each other without feeling the impulses towards those shameful acts that will then follow during the time of marriage.

65. Generally speaking, concerning adolescents and young women who are attracted to each other, it must be said that not all of these are to be condemned indiscriminately for grave sin, but I believe that they are ordinarily in a situation where they are very close to a mortal sin. This is evident from experience; for out of a hundred adolescents, scarcely two or three will be found immune to mortal sin when presented with such an occasion, and if not at the beginning, then at least in the progress of their relationship; for these who are attracted to each other first converse with each other out of inclination, and then the inclination becomes a passion after it has taken root in the heart, it clouds the mind, and leads them to many crimes. Hence, Cardinal Picus de Mirandola, Bishop of Cento, warned confessors in his diocese, by edict, not to absolve such individuals who are attracted to each other, if, after having been admonished three times by others, they have not refrained from such a relationship, especially at night, or for a long time, or secretly, or within homes (where there is an easy danger of kisses and touches), or against the will of their parents, or when one party breaks out in obscene words, or with scandal (as if in church), or with married couples, cloistered religious, or clerics in sacred orders. And in this matter, it must generally be noted that where there is a danger of formal sin, and

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of a precisely shameful sin, the confessor will apply rigor to the penitent all the more, and the more rigor he applies, the more he will benefit his salvation; and conversely, the more lenient he is, the more he will harm him.

[*Latin ed. p. 537*]

He endeavors to ensure that the penitent remains, or that he is dismissed. Saint Thomas of Villanova calls confessors who are willing to accommodate in this matter, rightly pious. This charity is contrary to charity. In these cases, penitents often try to ensure that confessors understand that removing the occasion will cause a great scandal. The confessar should be strong in disregarding such fears: the scandal will always be greater if the penitent, even after confession, does not remove the occasion.

66. Many Doctors of the Church believe that, for the first or second time, it is permissible to absolve one who is in a proximate occasion, even a voluntary one, before the occasion is removed; provided that he has a firm purpose and promises to remove it immediately. But here, a distinction must be made, as Saint Charles Borromeo (in the instructions given to confessors by him) distinguishes between occasions that are present and occasions that are not present. An occasion that is present is, for example, when someone keeps a concubine in the house, or when a female servant consents to advances made by the master, and similar things. An occasion that is not present is, for example, when someone bursts into blasphemies in India, or when someone, while drinking in a tavern, becomes embroiled in quarrels and drunkenness, or when someone, attending a feast, indulges in foul words and thoughts. With these distinctions made, it must be said that, in occasions that are not present, Saint Charles rightly teaches that absolution can be given once, twice, and even three times to a penitent who firmly promises to abstain from them; but if, after that, he does not remove the occasion, and sins in the same way, he cannot be absolved unless he first removes the occasion. But in occasions that are present, with Saint Charles, absolution must be absolutely denied unless the occasion is completely removed. And this opinion (ordinarily speaking) we have entirely approved in the book (Lib. 6, n. 454). The reason is that such a penitent is not disposed to absolution if he seeks it before removing the occasion; for by receiving it, he exposes himself to the danger of breaking his purpose and thus remaining in the same occasion. Let us explain this reason more clearly.

Furthermore, he commits mortal sin who is in a proximate, voluntary occasion and does not remove it. But when it is most difficult to remove the occasion, and it is not accomplished except through great effort, this effort is difficult for one who is already absolved, because, having lost the fear of remaining without absolution, he will easily persuade himself to resist temptation, without removing the occasion, and thus, by remaining in it,

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he will certainly fall again; as is daily proven in many penitents who, having received absolution from a somewhat careless confessor, pay very little attention afterwards to removing the occasion, and immediately relapse into worse behavior. Hence, we have said that, because of the aforementioned danger of breaking his purpose, it is mortally...

[*Latin ed. p. 538*]

It is a sin for the penitent to seek absolution before removing the occasion [of sin], and the confessor sins more grievously who grants it to him. 67. We have spoken ordinarily, for there are several cases excepted by the Doctors [of the Church] (l. 6, n. 454, v. "Dixi tamen"). in which the penitent can be absolved before removing the occasion. And there are 4 cases excepted: in which the penitent would present extraordinary signs of sorrow, so that it can be prudently judged that he is no longer in imminent danger of breaking his resolution to remove the occasion; for then those signs indicate that the penitent has been granted a greater grace, by which it is deservedly hoped that he will be steadfast in removing the occasion. However, it can always and absolutely be postponed, and I would postpone it to him, until he effectively removes the occasion. There are 2 cases excepted: in which the penitent cannot return, or can only return after a long time; then he can be absolved, if it is judged that he is well disposed by his resolution to immediately remove the occasion; because in that case, the danger of breaking his resolution is considered removed, because of the great burden that the penitent would have to bear by remaining without absolution, or by having to repeat his confession with another priest, or by remaining for a long time without the grace of the Sacrament. Therefore, when he is in a certain moral necessity of receiving absolution before removing the occasion, he has the right to be absolved immediately (Ibid. v. "Excipiendus 2."); for since he cannot remove the occasion before absolution, he is considered to be in a state of necessity. But this is not even to be admitted, if the penitent has already been admonished by another confessor about removing the occasion, and has not done so, because then he is considered a recidivist, and therefore he cannot be absolved, unless he presents extraordinary signs of sorrow, as we will say in the following chapter. 68. We say this with regard to a proximate, voluntary occasion [of sin]; but if the occasion is necessary, either physically, as if someone were held in prison, or was in danger of death, in which he would not have time and opportunity to cast out his concubine: or morally, that is, if the occasion could not be removed without scandal, or serious damage to life, reputation, or property, as the Doctors commonly teach (Lib. 6, n. 455.); in that case, the penitent can be absolved well, even without removing the occasion, because he is not then obliged to remove it; provided that he promises to take the necessary measures to ensure that the occasion becomes remote, such as, precisely in the case of a shameful sin, avoiding familiarity with the accomplice, and even the

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sight of him as much as possible; frequenting the sacraments; and often commending himself to God, renewing daily (especially in the morning) before the image of the Crucifix his resolution not to sin again, and to avoid the occasion as much as possible. The reason is, because the occasion of sin is not properly a sin in itself, nor does it necessarily lead to sin; therefore, true sorrow and the resolution not to relapse can well coexist with the occasion; and although everyone is bound to remove the proximate danger of sin, he under-

[*Latin ed. p. 539*]

It is connected with the fact that he himself freely desires such a danger, but when the opportunity is morally necessary, then the danger is removed by suitable remedies, and God then does not withdraw His grace from assisting him who has truly deliberated not to offend. Scripture does not say that he will perish who is in danger, but that he who loves danger; but it cannot be said that one loves danger, who is subjected to it unwillingly; therefore, St. Basil says (In Constit. Mon. e. 4): "He who, for some urgent cause and necessity, exposes himself to danger, or allows himself to be in it, although he would not, is not so much said to love danger, as to undergo it unwillingly; and therefore God will provide more carefully that he not perish."

69. Hence, learned doctors rightly say that those who do not want to abandon some office, business, or home in which they have been accustomed to sin, because they cannot leave it without serious detriment, are absolved, provided they have a true intention of amending themselves and of employing the means necessary for amendment (Lib. 6. n. 455. in fin.). But all agree that it is advisable in such and similar cases to postpone absolution, so that the penitent may be more diligent in carrying out the prescribed remedies.

However, I believe that the confessor not only can, but also ought to postpone absolution, whenever and as often as it is convenient, especially when it is a matter of a shameful sin; for he is bound, as it were, to apply more suitable remedies, just as a physician of souls; and I believe that no remedy is more suitable for him who remains in a proximate occasion, than to postpone his absolution, since it is very evident that many, after receiving absolution, neglect to carry out the prescribed remedies, and thus easily relapse. Conversely, when absolution is postponed to someone, he will be more vigilant in carrying out the remedies and in resisting temptations, for fear of being dismissed again without absolution, when he returns to the confessor.

Perhaps someone will consider me too strict in this matter; but I have always acted in this way in practice, and so I shall continue to act with those who are in a proximate occasion, even if it is a necessary and extraordinary one, unless a special necessity is shown to me to absolve them immediately;

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and in this way, I believe that I am much more helpful to the salvation of the penitents. Oh, that all confessors would act in this way, so that many sins would be avoided, and many souls would be saved!

I have said above: When it is a question of freeing the penitent from a formal sin, the confessor ought to be inclined towards more lenient opinions, as far as Christian prudence allows; but when lenient opinions bring the danger of a formal sin closer, as happens in this matter of proximate occasions, I say that it is entirely advisable, and sometimes necessary, that the confessor use stricter judgments, for then these are of much greater benefit to the salvation of souls. But if, however...

[*Latin ed. p. 540*]

If, remaining in a necessary occasion, one were to relapse in the same manner, even after remedies have been applied, and if there were but a slight hope of amendment, then I say that absolution ought entirely to be denied to this person until the occasion is removed (Ibid. n. 457). And here, I believe, the precept of the Gospel is pertinent: "If thy eye offend thee, pluck it out" (Mark 9:46). Unless, of course, the penitent should demonstrate signs of such extraordinary sorrow, that a prudent hope of amendment might be conceived (Lib. 6. n. 457. in fin.).

CHAPTER V. How a confessor ought to act with habitual sinners and relapsed sinners?

70. Habitual sinners must be distinguished from relapsed sinners. Habitual sinners are those who have contracted a habit in some sin, of which they have not yet confessed. These, as the Doctors say (l. 6. n. 459), can be well absolved the first time they confess of this evil habit, or if they confess of it after having retracted, provided they are disposed by true sorrow, and a firm purpose of employing efficacious means for amendment; but if the habit has been deeply rooted, the confessor may even defer absolution to this person, in order to see how constant he is in putting into practice the prescribed means, and so that he himself may come to conceive a greater horror of his vice. It should be noted here that five occurrences in a month can already constitute an evil habit in some external sin, provided that there is some interval between them. And in matters of fornication, sodomy, and bestiality, a much smaller number of occurrences can constitute a habit; for example, if one were to fornicate once a month for a year, he could well be called a habitual sinner.

74. Relapsed sinners, on the other hand, are those who, after confession, have relapsed in the same, or nearly the same, manner, without amendment. These, as is commonly taught (Ibid. v. Recidivus), cannot be absolved if they offer only ordinary signs, namely, if they merely confess, asserting that they repent, and propose, as is stated in Proposition 60, condemned by Innocent XI. For the habit contracted, and the past relapses without any amendment, give strong suspicion that the sorrow and pur-

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pose, which the penitent asserts he has, are not at all true. Therefore, absolution should be deferred to these for some time, until a prudent sign of amendment appears. And in this matter, the ruin of souls is to be lamented, for which so many bad confessors are the cause, by indiscriminately absolving so many relapsed sinners, who, finding confessors who always absolve them so easily, lose the fear of sinning, and continue to rot in the den of vices until death. Some Doctors (Lib. 6. n. 459. v. Dicunt) admit that a relapsed sinner can be absolved with only ordinary signs up to the third and fourth time; but I have never been able to agree with this opinion, as long as—

[*Latin ed. p. 541*]

He who, after a single confession, relapses without amendment, is already a true recidivist, and gives good reason for suspicion of his disposition. And it should be noted that this rule applies even with regard to venial sins; for although it is commonly admitted that those who fall into minor sins may more easily receive absolution, because the occasions for such sins are more frequent; nevertheless, it is the common opinion (l. 6. n. 449. Dub. 4.) that it is a grave sin, and a sacrilege to grant absolution to those who have made light confessions without true sorrow, and that it is not sufficient to be sorry for the multitude or excessive number of such sins, unless there is sorrow for some particular one, as we have shown (Ibid. Dub. 2.), contrary to the opinion of some. Therefore, it is easily to be feared that such confessions are sacrilegious, or at least invalid. Hence, the confessor must diligently take care not to indiscriminately absolve such penitents; for then, even if they are in good faith, he will not be able to excuse himself from sacrilege, by granting absolution to those who may not be sufficiently disposed to receive it. Therefore, if he wishes to absolve a penitent without sin, he must either dispose him to sorrow, especially for some minor sin, which he may fear more; or he must suggest to him that he confess some more serious sin from his past life, against some precept (for it is sufficient that he confess in general, without specifying the number); so that he may have a certain matter upon which absolution may be based; otherwise, even for this penitent, absolution should be postponed for some time.

72. I say "for some time," because it is not necessary to postpone absolution for recidivists, whether of minor or serious sins, for years or months, as Juvenius too rigidly desires (See l. 6. n. 463.); but it will be sufficient if the sin proceeds from intrinsic weakness, to delay absolution for eight or ten days, as the learned Author of the book published in Rome, entitled "Istruzione per li novelli confessori" (Part. 4. c. 9. n. 215) says; and the same Author says in the book accepted throughout Italy, entitled "Istruzione per li novelli confessori di terre, e villaggi" (Cap. 4. §. 4.), where, for this doctrine, he cites Louis Habert (In Praxi Pænit. tr. 4. p. 417.). They also

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add that a delay of a month is excessive and dangerous, because after so much time, it becomes difficult for such penitents to return. And this judgment is favored by Benedict XIV in the Apostolic Bull, where, speaking of confessors who postpone absolution to those who are rightly disposed, he then warns them: "Let them be invited to return as soon as possible, so that, having returned to the sacramental forum, they may be granted the benefit of absolution." Note the words, "as soon as possible," and "be granted." In summary, absolution may be postponed for up to fifteen or twenty days. But those who confess during the time of the Paschal precept should be excepted; for these, a longer period of experience is required, because there may be a just suspicion that these abstain from relapse rather to avoid censure than from a true purpose of changing their lives. Those who have fallen into

[*Latin ed. p. 542*]

The proximate extrinsic occasion; for these individuals require a greater experience, since the occasion (as was said in the preceding chapter) is a stronger incentive to sin. However, the experience of a month is always sufficient. Nevertheless, the confessor must take care not to say to the penitent, "Do not return until after a month," for this, due to such a lengthy delay, will excessively frighten him; rather, he should encourage him to return after eight, or fifteen days, and thus, in a gentle manner, lead him to receive absolution at the end of the month.

73. Therefore, in absolving those who relapse, ordinary signs of sorrow and purpose are not sufficient, but extraordinary ones are required; which, according to common opinion (Lib. 6, n. 459, see Recidivus), certainly suffice for granting absolution; for that extraordinary sign (provided it is solid and well-founded) removes the suspicion of indisposition, which arises because of relapses. The Bishops of Belgii, convened in the year 1697, rightly said in a decree issued for the guidance of confessors in their dioceses, speaking on this point: "In the conversion of a sinner, God considers not so much the measure of time, as the sorrow" (Croiae, l. 6, p. 2, n. 1823). Hence, they forbade confessors, by established law, from requiring from penitents who are still relapsing a notable period of time before absolving them. And rightly so, for the mere passage of time is not the sole sign of a changed will, since the will of the sinner changes by the power of divine grace, which does not require time, but sometimes acts immediately; therefore, the change of will can well be recognized by other signs, without the experience of time. Indeed, other signs of the actual disposition of penitents sometimes manifest the change of will much better than the passage of time; for such signs directly show the disposition, while, conversely, the experience of time shows it only indirectly, since it often happens that someone abstains from sin for a long time, and yet is still indisposed. Therefore, the author of the cited book, *Istruzione per li novelli confessori*,

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says (Part I, l. c., 45, n. 356): "If the fall arises from one's own fragility, without another external, voluntary cause, it is almost rash to say that every relapsed person is indisposed" (1). And elsewhere (Part I, c. 9, n. 213), he says that a relapsed person, because of the force of evil, should always be absolved, and should show a firm will to use the means for amendment, adding: "We judge that to act otherwise is too harsh, and that the confessor, by doing so, would be distancing himself from the Spirit of the Church, and of the Lord, and from the nature of the Sacrament, which is not only a judgment, but also a salutary medicine" (2).

(1) That is: If someone is a relapsed person because of weakness of spirit, without an external, voluntary cause, it is almost rash to say that he is indisposed. Edit.

(2) That is: We judge that to act otherwise is too harsh, and that the confessor, by doing so, would be distancing himself from the Spirit of the Church, and of the Lord, and from the nature of the Sacrament, which is not only a judgment, but also a salutary medicine. Edit.

[*Latin ed. p. 543*]

74. There are, however, more signs of this, as the Doctors teach (Lib. 6, n. 460). I. A greater sorrow manifested through tears (provided they are true signs of compunction), or through words proceeding from the heart, which can sometimes be more certain signs than tears. II. A smaller number of sins (understand that this means that the penitent has refrained from sinning in the same occasions and temptations); or if, after the last confession, the penitent has persevered in grace for a notable time, say for 20 or 25 days, whereas previously he was accustomed to fall many times in a week; or if he has relapsed after great resistance; or even if, before approaching confession, he has abstained for a long time from mortal sins. III. Diligence applied for amendment, such as if the penitent diligently avoids occasions of sin, faithfully carries out the penance prescribed by the confessor; or if he employs fasts, prayers, almsgiving, etc., to eradicate the vice. IV. If he asks the confessor for remedies or new means for amendment; also, if he promises to fulfill the penance that the confessor suggests to him at that time; especially if he has never been advised to use such means; but I do not believe that one should entirely trust these promises if other signs are lacking, since penitents readily promise absolution, but afterwards find it difficult to fulfill. V. Spontaneous confession, namely, if the penitent comes not merely to fulfill the Paschal precept, nor out of some self-interest by confessing certain things at certain times, such as on the feast of the Nativity of the Lord, on the feasts of the Blessed Virgin, and the like, nor is he prompted by parents, a lord, or a teacher; but comes entirely spontaneously, and truly inspired by divine light, solely for the purpose of receiving divine grace. Especially if he has undertaken a long journey to confess, has refrained from a notable profit, has endured a great

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inconvenience, or has overcome a great internal or external conflict. VI. If the coming about is due to some extraordinary impulse, such as after hearing a sermon, or after the death of a friend, or because of fear of some imminent punishment, such as an earthquake, plague, etc. VII. If the penitent confesses past sins through silent shame. VIII. If the penitent, before approaching, restores something that has been taken away, or restores a good name. IX. If, because of the confessor's admonition, he shows that he has apprehended a new understanding and horror of his sin, and of the danger of his damnation. Others add other signs, such as if the penitent willingly accepts a great penance; if he asserts that he repented of the sin immediately after committing it; if he protests that he would rather die than sin. But I do not know if these signs alone are sufficient; rather, I would say that they may serve to confirm other signs, which alone would not be sufficient. 75. Finally, whenever there is some sign by which it can be prudently judged that the penitent has changed his will, he can be absolved; for although the confessor must be morally certain of the penitent's disposition in order to absolve him, it should be noted that in other sacraments, in which the matter is physical, there must also be physical certainty; but in this sacrament of penance, since the matter is moral,

[*Latin ed. p. 544*]

As for the actions of a penitent, moral certainty, or relative certainty, suffices, as has been demonstrated (l. 6, n. 57 and 461). Indeed, it is sufficient that the confessor have a prudent probability regarding the disposition of the penitent, without any prudent suspicion to the contrary; otherwise, it would be difficult for any sinner ever to be absolved, for all the signs of penitents are founded on nothing other than a certain probability concerning their disposition. The author (of *Istruzione per li nov. confessori*) says: "Nothing is sought for the administration of penance other than a prudent and probable judgment of the disposition of the penitent; therefore, if the circumstances do not give rise to a prudent doubt that he is not sufficiently disposed, the confessor should not trouble himself, nor the penitent, to obtain certainty that is impossible" (Part 4, c. 15, n. 360). (4) And here it should be noted concerning bad habits, that recidivists in blasphemies can more easily be absolved than in other sins of hatred, theft, or lust, in which habits are more firmly ingrained, due to the greater concupiscence, or inclination, that is found in them. 76. It has been said that the confessor can grant absolution to a habitual and recidivist sinner, when he appears to be disposed by an extraordinary sign; but it is not held that he must do so, because he can also postpone absolution to him, if he deems it expedient, as the Doctors commonly teach (l. 6, n. 462); indeed, although the penitent, after confessing his sins, has the right to absolution, he does not have the right to be absolved immediately; for the confessor, like a physician, can, and sometimes must, postpone absolution, when he judges that such a

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remedy is necessarily beneficial to the salvation of his penitent. But is it ordinarily expedient to use this remedy, or not without the consent of the penitent? It is certain that it is not expedient if he sees that delay can bring more harm than benefit; and the Doctors say the same when, because of the delay, the penitent would have to suffer some infamy or danger (l. c., n. 463). Outside of these cases, some prefer that absolution be postponed to such recidivists. However, others generally believe that it is rarely expedient; and this is also the opinion of the celebrated missionary of our time, Father Leonard of Port Maurice, in his learned discourse published in Rome, entitled *Discorso mistico, et morale*. Nevertheless, it is better to say that in this matter, no certain rule can be established, but the confessor must conduct himself according to the circumstances that occur. Let him commend himself to God, and according to what he feels inspired, let him act. I believe that: If the penitent has relapsed due to an intrinsic weakness, as happens in sins of anger, hatred, blasphemies, softness, or pleasures, (1) That is: For the administration of the sacrament of penance, nothing is required other than a prudent and probable judgment of the disposition of the penitent; therefore, if the circumstances do not give rise to a prudent doubt that the penitent is not sufficiently disposed, neither the confessor nor the penitent should be troubled to obtain certainty that is greater than possible.

[*Latin ed. p. 545*]

I say, with the common opinion of the Doctors (Ibid. v. Ut autem.), that it is rarely advisable to delay absolution for a relapsed person, when he is disposed; for it should be hoped that the grace of the sacrament will be more beneficial to him than the delay of absolution.

77. I say this because of the intrinsic weakness; otherwise, a different course of action should be taken with one who has relapsed due to an external occasion, even if that occasion is necessary. For the occasion excites a more intense concupiscence, and the presence of companions stirs the senses more strongly, and makes the inclination to sin more intense, than does the intrinsic corrupt habit; and therefore, the penitent in an external occasion should exert great effort, not only to overcome the temptation, but also to remove himself from the familiarity and presence of companions, so that the danger may be removed from near. And this is all the more true if the occasion is voluntary, and it should certainly be removed, because then, the one receiving absolution, before removing the occasion, remains in great danger of breaking the resolution made to remove it, as we showed in the preceding chapter, n. 63.

Conversely, in the case of a fault caused by an intrinsic reason, the danger of violating the resolution is greater, because, on the one hand, there is no external object that urges him so violently to sin; and, on the other hand, he does not voluntarily retain the evil habit, as he does voluntarily not remove

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the occasion when he can; therefore, in such a case, God helps the one with the bad habit more, and therefore, more than from the delay of absolution, improvement can be expected from the grace of the sacrament, which will make him stronger, and will make the means he uses to eradicate the habit more effective.

For, as the Salmanticenses rightly say (De Pœnit. o. 5. n. 68. in fin.), it is more to be hoped that the delay of absolution will benefit a sinner who is lacking grace, than that it will benefit a friend of God who has received grace through absolution. And Cardinal Toletus (Lib. 5. c. 43.), speaking precisely of the sin of pollution, believes that there is no more effective remedy for avoiding this vice than to frequently avail oneself of the sacrament of penance; and he adds that this sacrament is the greatest restraint for those who commit such sins; and he says that those who do not use it should not promise themselves improvement except by a miracle. And in fact, St. Philip Neri (as is read in his life, Cap. 6. n. 2.) made frequent use of this means of frequent confession for those who relapsed in this vice.

This is also confirmed by what is said in the Roman Ritual, when dealing with penance: "For those who are easily led to relapse, it is most useful to advise them to confess frequently; and, if it is advisable, to receive Holy Communion." And by saying "those who are easily led to relapse," it certainly means those who have not yet eradicated the corrupt habit.

Some authors who seem to want to save souls only through the path of rigor, say that relapsed persons become worse when they are absolved before they are reformed. But I would like to know from these masters of mine, whether all relapsed persons, when they are dismissed without absolution and without the grace of the sacrament, are all...

[*Latin ed. p. 546*]

The stronger ones may escape, and all may be healed. How many miserable souls have I seen in the exercise of the missions, dismissed without absolution, having abandoned their vices and despair, and for many years neglecting to confess! However, I repeat: each one must conduct himself according to the light given to him by God. It is certain that those who are too lenient in this matter err more than those who are difficult in granting absolution. Indeed, many are lost souls because of excessive leniency (and it cannot be denied that these are in greater number, and cause greater damage, since they are habitual sinners); but others, through excessive rigor, are also greatly detrimental to the salvation of souls. And I do not know whether a confessor should only be concerned with scruples when he absolves those who are disposed, and not also when he dismisses those who are disposed without absolution. I conclude here, and say: I do not deny that, at times, delaying absolution can be beneficial to a contrite recidivist. Secondly, it is always beneficial that a confessor should frighten such recidivists, and show that he cannot absolve them. Thirdly, ordinarily

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speaking, for recidivists who are disposed by an intrinsic weakness, and by an extraordinary sign, the benefit of absolution will be greater than the delay. Oh, that confessors would absolve recidivists only when they present extraordinary signs! It is a lamentable thing that the majority of confessors universally absolve recidivists without distinction, without an extraordinary sign, without admonition, and without offering any remedy for amendment; and from this comes the true cause of the universal ruin of so many souls, already lost because they are dismissed while disposed.

78. However, what has been said, speaking generally of habitual sinners and recidivists, does not apply in the same way to those who are initiated into the sacred orders and are in some vice (especially in a shameful sin); for them, a different rule applies. A layperson who is a habitual sinner can be absolved, always and when he is disposed to receive the sacrament of penance, but a cleric who is a habitual sinner, if he wishes to ascend to the sacred order, is not sufficient to be disposed for the sacrament of penance, but he must also be disposed to receive the sacrament of orders; otherwise, he will not be disposed for either; for he who is unworthy to ascend to the altar, who scarcely escapes the state of sin, and who does not have positive virtue, which is necessary with respect to the sublimity of the state into which he is to be admitted, gravely sins if he wishes to receive the sacred order without that virtue, even if he is in the state of grace. Therefore, at that time, the confessor cannot absolve him, unless he promises to abstain from receiving the order to which he cannot ascend, except after a long period of time, at least several months of probation. This has been fully demonstrated in the Dissertation included in this work (Lib. 6, n. 63), with the common opinion of Doctors (Ibid. n. 68), who teach that for receiving the sacred order, it is not enough to have a common goodness, that is, a simple immunity from mortal sin, but it is required...

[*Latin ed. p. 547*]

A special goodness is required, purified by virtue from evil habits, as taught by the Most Reverend Thomas (2. 2. q. 189, art. 1, ad 3): The sacred Orders presuppose sanctity... therefore, the weight of the Orders must be imposed upon those already dried up by sanctity..., that is..., freed from the moisture of vices. And the reason is, because if the one being ordained does not possess this special sanctity, he is unworthy to be placed over the people, to perform the highest services at the altar: As those (the same Saint teaches) who receive the Order are placed over the people according to the degree of the Order, so too should they be meritorious in sanctity (Suppl. q. 35, art. 1, ad 3). And elsewhere (2. 2. q. 184, art. 8), he confirms this reason more explicitly, saying: Because through the sacred Order one is appointed to the most worthy ministries, by which Christ Himself is served in the sacrament of the altar, for which a greater interior sanctity is required than is required even for the state of religion. 79. However, an

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exception is made for the case in which someone is granted such extraordinary contrition by God, that it frees him from ancient frailty; for, as the Angelic Doctor himself says (3. p. q. 86, art. 5, ad 1): "Sometimes God so moves the heart of a man, that he suddenly and perfectly attains spiritual sanctity." Indeed, such conversions are rare, and especially in those being ordained, even if they seek entrance into a religious house to practice spiritual exercises; for these, for the most part, do not come willingly, but are compelled; but when someone truly receives such grace from God (whose mercy is admirable), that it changes him so much that, although he may still feel some evil inclination, he has conceived a great horror of sin, and at the same time recognizes a notable diminution in himself of the ardor of concupiscence, so that, fortified by grace, he can easily begin to resist temptations; and moreover, he has firmly resolved to avoid not only sins and occasions, but also to embrace more opportune means to live as befits a priest, and has already begun to pour forth fervent prayers for his perseverance, with great and such confidence in God, that he is morally certain of a great change in his life; in this case, the confessor can rightly absolve him, even if he wishes to receive the sacred Order immediately after confession. Nevertheless, even in such a case, the penitent having great contrition, the confessor should, as much as possible, strive to persuade him to postpone the reception of the Order, so that he may better cleanse himself of evil habits and better carry out the intentions he has conceived. Indeed, for this purpose, if he is unwilling to postpone the reception, the confessor, as a physician, can even postpone absolution for his greater benefit, so that the one being ordained may postpone the reception of the Order. However, this must be understood, so that through such a delay he does not incur the danger of any infamy or stigma; for then (as noted in n. 69), the penitent...

[*Latin ed. p. 548*]

He has the right to be absolved immediately. Furthermore, confessors ought to be as strict as possible in absolving those who are ordained, for those who are ordained afterward often turn out to be the worst, and thus inflict great harm upon the people and the Church (See book 6, no. 69).

CHAPTER VI. How a confessor ought to act with penitents who have incurred some censure, or a reserved case, or an obligation to denounce, or an impediment to marriage.

80. Regarding censures, if someone approaches burdened by a censure or a reserved case concerning which the confessor does not have the authority, as we have stated above, it is an act of charity for the confessor to seek the authority from the Bishop. The Bishop, by virtue of canon 24 of the Council of Trent (See book 7, no. 75), can absolve all papal censures, whether hidden or manifest. And he can delegate this authority to other confessors, even generally, provided that he specifically designates them to absolve such cases (Ibid. no. 93), except for heresy and other cases

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mentioned in the papal bulls; unless the penitent is prevented from going to Rome; in which case, the Bishop can absolve from all papal censures, even public ones (Book 7, no. 84), and even from heresy and other cases mentioned in the papal bulls (Book 7, no. 84). Moreover, Bishops can absolve from excommunication for a slight offense by a cleric or monk, and even for a grave offense, if the one who committed the offense is a woman, according to canons "Ea noscitur" and "Mulieres, de sent excomm." Also, from excommunication for abortion of a living fetus, by virtue of the bull of Gregory XIII, which begins "Romana Sedes"; also, from excommunication for receiving communion in the same state of sin as those who are excommunicated, by the same Bishops; also, from excommunication incurred by minor religious orders who admit members of the third order into their churches for divine services; also, from excommunication to which those are bound who, having been absolved of some censure reserved by the Bishop at the point of death, do not present themselves to him after they have recovered, and indeed, from all censures which the Bishops reserve for themselves (Book 7, no. 213).

81. Regular clergy can also absolve laypersons from hidden papal censures (Book 7, no. 96), except for six cases of Clement VIII (from which, however, Bishops can absolve, when they are hidden), namely: 1. Assaulting a cleric. 2. Duels. 3. Violation of ecclesiastical immunity. 4. Breaking the enclosure of nuns. 5. Real simony. 6. Confidential simony. The authority regarding these cases, with respect to regular clergy living outside of Rome and within Italy, was expressly taken away from the aforementioned Pope (l.c. no. 99).

[*Latin ed. p. 549*]

Regular canons cannot absolve laypersons from cases reserved to bishops (Lib. 7, n. 98), but they can, with a more probable opinion, absolve from cases reserved to bishops by Papal decree (loc. cit., n. 99), except always for the six cases of Clement, as mentioned above. Regarding their subjects, they can absolve them from all cases reserved to the Pope, even public ones, and also from cases under the "Cæna" bull, except for relapse into heresy, falsification of apostolic letters, and denunciation to infidels, by concession granted to the superiors of the Order of Preachers, and by communication with other orders in the bull "Pretiosus," issued in the year 4727. Furthermore, it is granted to the entire order that it alone can dispense from such irregularities (that is, those arising from homicide) with its subjects, provided that the homicide has not been proven and has been committed within the cloister. (Lib. 7, n. 104 and n. 104).

82. It should be noted here that if someone is unaware of a papal censure, neither he nor his confessor incurs the censure or the reservation, because papal cases are primarily reserved because of the censure (Lib. 6, n. 580); this is different from episcopal cases, in which, even if one is unaware of

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the censure, the case is incurred; because bishops primarily reserve cases (Ibid.). And this is true even if the reservation itself is unknown, as we have proven (loc. 6, n. 584). Moreover, no censure is incurred by one who is invincibly unaware of it (Lib. 7, n. 43). Also, it should be noted that if someone has confessed sacrilegiously during a jubilee, the reservation is not removed, as has been proven, especially from the declaration of Pope Benedict XIV (Lib. 6, n. 537, Qu. II). We also hold (Ibid., v. "Si autem") that if the confession is invalid, speaking of the jubilee; but outside the jubilee, if someone has confessed invalidly to a confessor who had the authority over reserved sins, the common and more probable opinion is that he remains absolved from the reservation (Lib. 6, n. 598, Qu. IV). It is also a more common and sufficiently probable opinion that the penitent is absolved from the reservation, even if the confession was sacrilegious, provided that he did not culpably fail to mention, especially, a reserved sin (Ibid.).

83. II. Regarding the obligation to denounce, the confessor should note that he is bound under a grave penalty to impose on the penitent the obligation to denounce to superiors someone who has seriously proposed, or uttered, a heretical blasphemy, with error of judgment and persistence, and not simply because of ignorance, carelessness, or a slip of the tongue; for in that case, it is sufficient that the penitent warn him of his error (Lib. 5, n. 254, v. Not. II). Furthermore, he must impose on women or children that they denounce confessors who have solicited them for immoral acts, or who have treated them inappropriately. Observe the book where this matter is discussed in detail (Lib. 6, n. 675). But regarding practice, the confessor should note 4. that in this matter of denunciation, it is not too hasty to impose on the penitent this obligation of denunciation, for in doubt, whether it was or was not necessary.

[*Latin ed. p. 550*]

A citation, such as this, should not be imposed unless the words or actions themselves suggest solicitation, and only if there is doubt about the intention of the solicitor; or if there are strong indications, though not proof, of solicitation, without any indications to the contrary; in such cases, they provide a certain moral basis (Ibid. See Exception). Note 2: One should not be quick to impose upon oneself the burden of denunciation, except in a very rare case, in which charity might suggest it, due to the great difficulty that the penitent might have in approaching superiors. Note 3: One must never fail to impose upon a penitent who is solicited this obligation of denunciation, even if one foresees that the penitent will not fulfill it; for it is directly commanded by the Pontiff to the confessor to impose such an obligation (Book 6, n. 694). Therefore, if the penitent does not fulfill it, it is fitting to postpone absolution for him. And if the confessor doubts whether he will be able to fulfill it with difficulty, then he must absolutely postpone absolution for him. However, he can absolve him if the penitent

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is currently prevented, and has a firm intention of denouncing, as soon as it is convenient (loc. cit. n. 693). Such denunciations must be made at least within a month (Ibid. See: However). Also, it should be noted that by order of His Holiness Pope Benedict XIV (Book 6, n. 491), everyone is obligated to denounce the confessor, if they know that he has obligated the penitent to reveal a accomplice, unless he did so out of mere simplicity or imprudence. Finally, it should be noted regarding the sorceries of laypeople, that today in our kingdom of Naples, due to the influence of our King Charles III, there is no obligation to denounce, unless the abuse of the Holy Eucharist or of Holy Oil is involved (Book 5, n. 253, in footnote).

84. III. Regarding impediments to marriage, when a penitent has an impediment, and the marriage has not yet begun, several distinctions must be made: If the impediment is of consanguinity, or spiritual affinity, or of affinity arising from a lawful marriage up to the fourth degree, or of public decency, even if it was hidden, the confessor must urge the penitent either to denounce the impediment, or to obtain a dispensation from the Dataria. However, if the impediment is of affinity arising from an unlawful marriage with a relative of the bride up to the second degree, provided that the marriage has been consummated with perfect procreation (Book 6, n. 4036 and 4075), or if it is an impediment of crime, namely, the murder of a spouse by both parties conspiring, or the murder with adultery, or adultery with fidelity to the marriage, or an attempted marriage, as has been extensively declared in the book (Book 6, n. 4033); in these cases, since the impediment is always hidden, a dispensation must be obtained from the Sacred Penitentiary. The same applies if the penitent has an impediment of vow, chastity, or religion. If, however, there is a very urgent reason in a very rare case, namely, scandal, quarrels, or...

[*Latin ed. p. 551*]

If a grave infamy were imminent, or if the time or manner were lacking for recourse to the Penitentiary, even then the Bishop could grant a dispensation (l. c. n. 4422). And if there were no means of reaching the Bishop, observe what is said in the Book (Lib. 6. n. 612. Sed hoc.) and above, n. 8. 85. However, if the penitent has already contracted an invalid marriage due to a dispelling impediment, then if the impediment arises from a licit union, the provisions of Lib. 6. n. 4424 must also be observed; but if it arises from an illicit union, or from a crime, and the penitent is acting in good faith, and if, on the contrary, there is a danger of death, scandal, or incontinence, and the impediment is revealed to him, in that case, the confessor must conceal the impediment from him, and in the meantime, he must seek a dispensation from the Holy Penitentiary; once obtained, he must reveal the impediment, and then he must carefully consider with himself the manner in which the marriage is to be validated. For this validation, the assistance of the parish priest and witnesses is not required, as has been demonstrated

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(l. c. n. 4410); but as we have said (Lib. 6. n. 4415), the party conscious of the impediment is bound to inform the other party of the nullity of the marriage, according to the usual clause of the Holy Penitentiary: "That the woman be informed of the nullity of the prior consent, etc." And therefore, by itself, what some Doctors admit is not sufficient to fulfill this clause, namely, to say: "If you had not led me, you would be leading me now." Or: "Tell me, and I will tell you." Or: "For my consolation, let us renew our consent." For such a consent is always dependent on a prior consent, which was null. Nor is it sufficient, as others say, to have a union, even with marital affection. However, it will be sufficient to say: "Our marriage was invalid due to a certain circumstance" (provided that there is no obligation to reveal the nature of the impediment), "let us renew our consent." Or: "When I took you, I did not have true consent" (for a null consent is not a true consent). Or: "I have doubts about the validity of our marriage, therefore let us contract it again." Because then the consent given is no longer dependent on the prior consent. However, when a prudent fear exists that, by using the aforementioned methods, the crime would be revealed, and dangers of quarrels, infamy, or scandal are present, and, on the other hand, the spouse conscious of the impediment cannot be excused from fulfilling his duty, then, once the dispensation has been granted, it is sufficient for him to use one of the methods mentioned above; and it is also sufficient for him to give his consent alone, since in such a necessity he can follow the opinion that teaches that it is well to join his consent to the marriage with the consent initially given by the ignorant party, who, by continuing the use of marriage, or cohabitation, virtually perseveres (Ibid.). 86. If the penitent had an impediment preventing him from seeking the remedy, namely, due to the marriage contracted with a consanguineous person in the second degree of his wife, then he must be freed from such an impediment, either by the Holy Penitentiary, or by the Bishop, or by any regular confessor who has the power from the superior of his monastery (l. c. n. 4076. v. Insu-

[*Latin ed. p. 552*]

(per.). Sed si poenitens ignoret legem ecclesiasticam, quae ultra divinum hujusmodi incestum prohibet, tunc non incurrit impedimentum (Lib. 6. n. 4072.); quinimo etiamsi legem sciret, sed talem poenam ignoret, etiam est probabile, quod eam non incurrat (l. c. n. 4074.), saltem si periculum exstet incontinentiæ, relinquendus est poenitens in sua bona fide. 87. Notemus hic formulas ad obtinendam à S. Pœnitentiaria dispensationem in præfatis impedimentis, necnon votis, aut irregularitatibus. Circa impedimenta matrimonii, intus sic scribatur: Eminentissime et Reverendissime Domine. N. N. rem habuit cum quadam muliere, et postea sponsalia contraxit cum ejus sorore. Impedimentum est occultum, et si conjugium non fieret, plura evenirent scandala. Supplicat ideò Eminent. V. ut dignetur ei dispensationem concedere. Favebit responsum mittere Neapolim (aut Aversam per

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viam Neapolis) ad N. N. (hic exprimatur nomen et cognomen) confessarium approbatum etc. Si autem matrimonium est jam initum scribatur sic: N. N. ignarus (aut conscius) impedimenti, matrimonium contraxit cum aliqua fœmina, cujus matrem (aut sororem) prius carnaliter cognoverat. Ideò, cum impedimentum sit occultum, et non possit separatio sine scandalo fieri, supplicat Eminent. V. pro absolutione et dispensatione, etc. Circa vota castitatis: N. N. votum emisit castitatis, sed nunc est in gravi, et imminenti periculo incontinentiæ; ideò supplicat Eminent. V. ut dispensare dignetur in dicto voto, ut possit orator matrimonium inire, etc. Eodem modo fere scribendum pro dispensatione in voto religionis. Et notandum quod ad dispensandum in voto castitatis non sufficit quodvis commune periculum incontinentiæ, sed requiritur grave et imminens prout innuimus. Circa irregularitates: N. N. Sacerdos contraxit irregularitatem causa homicidii (aut violationis censuræ, etc.); et cum adsit periculum infamiæ, si abstinet à celebrando, ideò supplicat, etc. Foris in Epistola ponatur: Eminentissimo et Reverendissimo Domino Colendissimo Domino Cardinali Pœnitentiario Majori Romam. 88. Confessarius, aut is cui dispensationis executio commissa erit, in dispensando post sacramentalem absolutionem impertitam, sequenti formula uti poterit: Et insuper auctoritate apostolica mihi concessa dispenso tecum super impedimento primi (seu secundi, seu primi et secundi) gradus proveniente eœ copula illicita, à te habita cum.

[*Latin ed. p. 553*]

To the sister of the woman with whom you have contracted marriage (or intend to contract marriage), so that you may again contract marriage with her, and I declare, with renewed consent, and any offspring that you may have (or have had), to be legitimate. In the name of the Father, etc. If the dispensation is regarding a vow of chastity, he says: "Furthermore, I grant you a dispensation from the vow of chastity which you have emitted, so that you may be able to contract marriage and use it, in the works which I prescribe to you, by granting this dispensation. In the name, etc. And if anyone, despite a vow of chastity, has contracted marriage, he will say: "Also, despite the vow of chastity which you have emitted, so that you may remain in marriage and fulfill marital duties, I grant you a dispensation with the authority of the Apostolic See. In the name, etc. 89. In which cases the Holy Pontiff can absolve, or grant a dispensation from papal cases, censures, irregularities, vows, oaths, uncertain restitutions, etc., observe the book (Lib. 7, n. 470). And in which cases he can grant a dispensation regarding impediments to marriage, see (Lib. 6, n. 144). CHAPTER VII. How should the confessor behave with people of different kinds? § I. How with children, adolescents, and young women? 90. With children, he should use all charity, and gentler methods as much as possible. First, he should ask them if they know the tenets of the faith? And if they do not know, it is necessary to instruct them patiently at that time, if the opportunity is

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present, or to send them to another, so that they may be instructed at least in the things necessary for salvation. But when dealing with confession, he should first take care that the children confess their sins from themselves; and afterwards, the following questions can be asked of them: 1. Have they concealed any sin out of shame? 2. Have they blasphemed against the Saints, or holy days, or have they sworn falsely? 3. Have they neglected to hear Mass on holy days, or have they failed to listen to the sermons given during Mass? And have they worked on holy days? 4. Have they been disobedient to their parents, or have they shown irreverence towards them by rebuking them, raising their hands against them, or by uttering reproaches or curses in their presence? And here it should be noted what was said in n. 34, regarding the manner of requesting the children to ask for forgiveness from their parents. 5. Have they committed any shameful sin? But in this matter, the confessor must be very careful in asking questions: he should begin by asking about general things, and with general words: and first, whether they have said bad words? whether they have joked with other boys, or girls? And if they have engaged in those jokes in secret? Then he should ask if they have committed shameful acts. Often, even if the children deny it, it is helpful to question them further.

[*Latin ed. p. 554*]

With suggestive questions, for example: "And now tell me, how many times have you done this? Five times, ten times?" He will ask them with whom they sleep, and whether they have played games with their hands in bed? He will ask the girls whether they have pursued any young men with love, and whether there have been any impure thoughts, words, or touches. And from the answers, he will proceed to further questions, but he must be careful not to ask girls or boys whether there has been an emission of seed; for with them, it is better to omit this in the integrity of material confession, than to be the cause of them understanding things they do not yet know, or of them being placed in a curiosity to learn. He will also ask the boys whether they have brought news or gifts to women? And the girls, whether they have received gifts from suspicious people, namely, married people, or those in the Church or religious orders? 6. He will ask whether they have committed theft, or whether they have caused damage to the property of others, to animals, or in any other way? 7. Whether they have slandered anyone? 8. Regarding the precepts of the Church, he will ask whether they have fulfilled confession and the Paschal communion? And whether they have eaten meat or dairy products on forbidden days? 94. But with regard to granting absolution to these boys, great attention is required. If it is clear that they already have sufficient use of reason, as if they confess distinctly, or answer the questions adequately, and it appears that they already understand that they have offended God through sin, and have deserved hell; then, if they seem sufficiently disposed, they should be

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absolved. But if they are recidivists in mortal sins, they must be treated like adults: therefore, if they do not show extraordinary signs of sorrow, absolution should be postponed for them. If, however, it is doubtful whether a boy has perfect use of reason, as if, for example, he is not composed during the act of confession, but looks around, plays with his hands, or is inattentive; then, if he is in danger of death, or is obligated to fulfill the Paschal precept, he should be absolved conditionally; and all the more so if he has confessed some mortal doubt (Book 6, n. 432, verse IV). For it is well to administer the sacrament conditionally, when there is a just reason for doing so, so that this boy may be freed from condemnation, if he should ever fall (Book 9, n. 28). This must be done, even if the boy is a recidivist; because absolution should be postponed for those who have perfect discretion, because there is hope that, from such a delay, they will return disposed; but this hope is difficult to have for boys who lack perfect use of reason. And it is probable that many Doctors say (loc. cit., n. 432, in fine) that these boys, who are doubtfully disposed, can be absolved conditionally (at least after two or three months), even if they only confess venial sins, so that they do not long lack the sacramental grace, and perhaps even sanctifying grace, if they perhaps have some grave fault hidden from them. It is necessary to ensure that these boys elicit the necessary act of sorrow in order to receive absolution, in a manner more proper to them, for example: "Do you love God, who is your Lord?"

[*Latin ed. p. 555*]

"He who created you, so great and so good, died for you, etc.? You have offended this God. He desires to forgive you, and you should hope that, through the blood of Jesus Christ, His Son, He will pardon you. But you must repent. What do you say? Do you repent of having offended Him, etc.? Do you know that, through these offenses, you have deserved hell? Does it displease you that you have committed them? My God, I will never again offend you, etc."

To these children, penance should be prescribed as lightly as possible, and care should be taken to ensure that they fulfill it promptly, otherwise they will either forget it or neglect it. The confessor should also strongly encourage the children to be devoted to the Blessed Virgin, and to recite the Rosary daily, and three times "Hail Mary" in the morning and evening, always adding this prayer: "My Mother, deliver me from mortal sin."

92. Regarding the state to be chosen by a young person, the confessor should not presume to determine it for him, but should only, based on certain signs, suggest the state to which he can prudently judge that the young person is called by God. Especially, when speaking of those who wish to enter religion, the confessor should first carefully consider what kind of religion they wish to enter; for if that institute has ever been lax, it will be better for someone (speaking generally) to remain in the world;

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for by joining such a group, he will behave as others do, and the good that he previously practiced will easily be neglected in such a religion, as happens unfortunately to many. And the confessor should take great care if he is encouraged by relatives to persuade the young person to enter some such community that is lax. However, if the religion is one of observance, the confessor should carefully examine the young person's vocation, inquiring whether the young person has any impediment to it, such as poor health, poverty of parents? And he will best determine the true purpose, namely, whether it is truly to unite himself with God, or to amend a past life, or to avoid the dangers of the world? If the primary purpose were worldly, to lead a more comfortable life, or to free himself from relatives in difficult circumstances, or to please parents who urge him to do so, he should beware of allowing him to enter religion; for in that case, it is not a true vocation, without which such an entry will have a bad outcome. However, if the purpose is good, and there is no impediment, then neither the confessor nor anyone else, as taught by St. Thomas (Quodlib. 3, art. 14), can, without grave fault, prevent or dissuade him from his vocation; although he may sometimes act prudently if he delays its fulfillment in order to better ascertain whether the resolution is firm and persevering, especially if he knows the young person to be fickle, or if the deliberation has been made during a time of missions or spiritual exercises: for in such occasions, certain intentions are conceived which, after the initial fervor has passed, fail.

93. If any young person wished to embrace the state of a secular priest,

[*Latin ed. p. 556*]

It is not fitting for a confessor to readily grant absolution without long and proven experience of a right intention, knowledge, or sufficient capacity. Secular priests, indeed, have the same, even a greater, obligation than religious, and they remain in the same secular dangers; therefore, in order that a priest may become truly good in this world (in which good men are rarely, if I may say, very rarely found), it is necessary that he first lead a life of great example, removed from amusements, idleness, bad companions, and dedicated to prayer and the frequent reception of the sacraments (but who is this, and we shall praise him?); otherwise, he will place himself in a state of almost certain damnation; especially if he does this in order to obey the wishes of his parents, which is to increase family affairs. It has already been stated above, in n. 33, how grave a sin it is when parents force their children to unwillingly enter the ecclesiastical or religious state. As for girls who desire to consecrate their virginity to Jesus Christ, let them not make a vow of perpetual chastity unless they are well grounded in virtues, instructed in the rules of spiritual life, and especially practiced in prayer. At the beginning, only allow them to vow chastity for a definite period of time, namely from one feast day to another.

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94. Finally, concerning those adolescents who wish to or ought to marry (I say ought, as has been proven in the book [Lib. 6, n. 75], speaking of those who were incontinent and unwilling to use other suitable means to restrain themselves), it must be noted that just as parents sin who, without just cause, prevent them from entering into a legitimate marriage (l. c., n. 849, v. Conveniunt), so, conversely, the children sin (and therefore the confessor is bound to forbid this to them) who wish to enter into marriage with dishonor to the family; or, although the marriage is not improper, they wish to contract it against the will of their parents, and to their scandal, unless the children themselves have a just reason for which they can excuse themselves. Observe how this is explained in the book (l. c., n. 849, § II). How should one behave with scrupulous individuals? 95. Many doctors give rules for scrupulous individuals; but it is certain that, after prayer, the greatest, if not the only, remedy for treating them is obedience to their director. Therefore, the confessor must first and foremost urge this type of penitent to follow two principal rules: first, that he himself walk safely before God by obeying his spiritual director, where no evident sin is apparent; for then he is not obeying a man, but obeying God Himself, who said: "He who hears you, hears Me." Thus, all doctors and spiritual masters teach, along with St. Bernard, St. Antoninus, St. Francis de Sales, and St. Philip Neri.

[*Latin ed. p. 557*]

St. Theresa, St. John of the Cross, St. Ignatius of Loyola, Blessed Dionysius of the Carthusians, Blessed Humbert, Venerable Father Avila, with a great number of others, etc. Another rule is that he should not be troubled by any other scruple than that which arises from disobedience, because of the great danger to which he exposes himself by losing, not only peace, devotion, and progress in virtues, but also his mind, health, and even his soul; for scruples can progress to the point of leading him to despair, causing him to take his own life (as has happened to many), or to relax in his vices. Furthermore, the confessor of such a scrupulous penitent should remind him, as the learned author of the instructions for new confessors rightly says (Part 4, no. 76), that one should not enter into discussions with God about what has been given and spent. The Lord, for our good, willed that we live uncertain about our salvation; therefore, when we use moral diligence to avoid offending Him, we must entrust all our care to His mercy; and confessing that we cannot be saved without His grace, we must always ask for it from Him with perseverance, confidence, and peace of mind. "It is better," said St. Francis de Sales, "to walk with closed eyes under divine Providence, amidst the darkness and perplexities of this life." It is advisable that we be content if we know from our spiritual father that we are walking well, and that we do not seek out hidden dangers. Never does a man perish who obeys. St. Philip Neri affirmed that he who obeys

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his confessor is secure that he will not have to give an account of his actions to God (In vita, book 4, chapter 20). And, on the contrary, St. John of the Cross said: "Do not rely on the words of the confessor; it is pride, and a disregard for faith" (Tratt. delle Spine, collection 4, § 2, no. 8). 96. Finally, the confessor should: 1. Frequently converse with such a penitent about the excessive confidence that we should have in Jesus Christ, who died for our salvation, and in His Most Holy Mother, who is so powerful and merciful to those who commend themselves to her, and encourage him to live securely about his salvation, always fleeing to Jesus Christ and Mary: for certainly they hear. 2. He should forbid him from reading books that arouse scruples, and from associating with scrupulous people; and if anyone is excessively afflicted, he should forbid him from attending sermons filled with terror, and from examining his conscience about those things about which he has a scruple, but irrationally. 3. If the scruple consists in the fear of assenting to evil thoughts (e.g., against the faith, purity, or charity), the confessor should be free and fearless in dismissing it, and should assure the penitent that these thoughts are punishments, and not consent, nor sins. And in this, he should especially use that rule which the Doctors assign (Book 6, no. 479), that when a person is troubled by a sensitive conscience, if he is not more than certain of mortal sin, he should judge that he has not committed it; indeed, as Father Alvarez says, "it is only a possible monster."

[*Latin ed. p. 558*]

It is not within the power of a scruple to enter the soul unless it is clearly perceived. Therefore, it is sometimes beneficial to impose a penance upon the scrupulous, so that they do not accuse themselves of such thoughts unless they are certain; and so that they may testify under oath that they have consented. And it should be noted that the scrupulous are not to be governed by particular rules, but by general ones; for the scrupulous never attain to a state where they can apply particular rules to themselves, always doubting whether that rule is valid or not for the present case, which always seems to them to be different from that which the confessor supposes.

97. If the scruple concerns past confessions, namely, that they have not fully explained all sins or circumstances in them, or that they have been deficient in sorrow, the confessor, when he perceives that the penitent has made a general confession, or has repeatedly recounted the same things for a considerable time, should impose upon him not to deliberately recall those things again, and not to speak of sins of the past life, unless he can swear that they were certainly mortal sins, and furthermore, that he has certainly never mentioned them in confession; for the Doctors teach that even if a scrupulous person has, through inadvertence, omitted some grave sin, he is not bound (at least if he is not certain about it) to maintain the integrity of the confession with such inconvenience and danger, from which he can, to a lesser extent, be excused (Lib. 6, n. 488). The confessor must

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take care that the penitent obeys exactly, and if he does not obey, he must rebuke him, deny him communion, and strictly restrain him. Scrupulous persons are usually treated with gentleness, but in the matter of obedience, great strictness must be applied to them; for if they lose this anchor of obedience, they are certainly in danger of shipwreck, for they will either become hardened, or they will relax their vigilance in vices.

98. If the scrupulous person fears sinning in everything he does, the confessor should instruct him to act freely and overcome the scruple; and he should tell him that he is, in fact, obligated to overcome the scruple, always and clearly, unless he perceives that the action is certainly a sin; as the Doctors Segneri teach (Lib. 6, n. 476). It does not matter that he acts with actual fear, since that will not eliminate the scruple (which is almost impossible to demand of scrupulous persons); for such fear is not the true dictate of conscience, or formed conscience, as Gerson rightly distinguishes, nor is it a true practical doubt; nor does it remove a judgment that has already been formed (which virtually persists, although it may not be noticed at that time because of the impact of fear), namely, that he is not sinning, for he is acting, whatever he is doing, not against his conscience, but against that vain fear. Therefore, the confessor should instruct this kind of penitent to overcome the scruple and disregard it, acting freely in doing what the scruple forbids him; and furthermore, he should order him not to confess about it ever again.

[*Latin ed. p. 559*]

§. III. How one ought to behave with devout persons. To those devoted to prayer, who frequently approach for Communion, it is generally advisable to suggest that they receive sacramental absolution at least once a week. Such penitents, if they confess only imperfections that do not certainly pertain to mortal sins, Bonacina states (Lib. 6, n. 432, v. IV, "Si dubitetur") that they can be absolved under certain conditions; but I do not believe this should be permitted, except very rarely, and only when they themselves are unable to specify any certain faults from their past life, or only with great difficulty. Furthermore, I say that if the penitent does not present any certain matter [for confession], the confessor should not be angry and press him to reveal it in order to absolve him; and if, after questioning, he finds nothing, he is not obliged to grant him a conditional absolution. This is because the penitent confesses (as I said) about defects concerning which there is doubt as to whether they pertain to mortal sins; but if he confesses certain venial sins, even those that are usual or daily, such as impatience, intemperance, distractions in work, in prayer, and the like, then it must be considered whether he has ever made some effort, as far as he could, to overcome these passions, because in that case his faults can be judged to have arisen more from human frailty than from a lack of sorrow or intention. Conversely, if he frequently and without resistance falls into such sins,

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then he must be treated as a recidivist; according to what is stated in nos. 71, 400. Moreover, the following should also be noted: 1. The confessor should be careful not to prevent his spiritual penitents, especially women, from approaching another confessor; and if he notices that they have done so, he should show that it pleases him; indeed, he should encourage them to confess before others, except in the case of someone who is very scrupulous, about whom he reasonably fears that, if he were to go to another who is unaware of his conscience, he might become noticeably disturbed. 2. The confessor should also be careful not to show himself to be concerned about taking over the direction of someone's soul. 3. He should never, without necessity, speak of the defects of other confessors, but rather diligently seek to excuse them for any error they may have committed. 4. He should not accept the direction of someone who wants to leave his director, unless there is a pressing reason, as taught by St. Philip Neri, St. Francis de Sales, St. Charles Borromeo, and others; because from this, often arise distractions, disturbances, and sometimes even scandals. He should also note that it is not enough for a penitent to feel some aversion towards his confessor, or to seem to no longer have faith in his words; as St. Teresa says, it is often a temptation of the devil. Therefore, St. Francis de Sales teaches: The confessor...

[*Latin ed. p. 560*]

It is not to be changed without a grave reason. But, on the other hand, it is not fitting to be unchangeable in this matter, if legitimate causes for change arise. Furthermore, St. Teresa states that a defect in goodness can be a just cause for changing a confessor, saying thus: "If a confessor appears inclined to some vanity, he should be changed; for he himself being vain, he will make others vain." Therefore, a defect in doctrine can also be a just cause for changing a confessor; however, one must have a certain presumption of this. Furthermore, St. Teresa says that, concerning doubtful matters, a penitent can rightly consult other learned directors, and sometimes this is altogether necessary.

4. A confessor should avoid showing partiality towards any penitent. Some are too prone to excessive affection; and this involves much care, time, and labor. It is not to be denied that some souls sometimes require more assistance than others; but assistance is one thing, and attachment is another, which causes the confessor to be less attentive to other penitents. Therefore, it is fitting that the confessor should set aside a certain day or time for that person who is in greater need, so that others may not be inconvenienced.

401. 5. When hearing the confessions of these spiritual persons, a confessor must take care not to raise his voice too much, even though he is not speaking of sins: for it can happen that others will be afraid to confess their sins, for fear that the confessor will speak in a loud voice.

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6. It should not be easy to allow devout young girls to cut their hair and put on a religious habit; but care should be taken that they first establish firm roots in the spiritual life and in virtues for a long time. Because of this excessive leniency of confessors, how many girls afterwards abandon the habit and enter into marriage, to the scandal of the place, and to the bad example of others!

7. A confessor should not indulge these girls to the point of allowing them to be taught by men, and much less to write. How many simple girls, because they have learned to read, have ruined their souls! If this is not a proximate occasion of sin, at least it is not a little dangerous. If they desire to learn such things, let them be taught by some other woman, or by a young brother (and still with caution), otherwise, the confessor should not absolve them; nor should he absolve mothers who permit this.

8. A confessor should not allow young women to wander about, visiting churches, and to remain in the church longer than is necessary, causing disturbance to their parents; but he should urge them to obey them, and to undertake domestic labors. How much and in what way a confessor should be careful to avoid familiarity with his penitents, this will be discussed in n. 449. Concerning the direction of spiritual souls, we will speak in the entire IX chapter.

[*Latin ed. p. 561*]

§. IV. How a confessor ought to behave with the mute and the deaf. 402. If a person is both mute and deaf, in order to receive his confession, it is necessary to bring him to some secluded place, and to elicit from him, by some sign, the nature of his sins and his sorrow, in the best way that he can. But before hearing him, the confessor should take care to be instructed by his relatives about his vices, and about the manner in which he can be understood, and by which he can understand; and when he has perceived some particular sin, along with a sign of sorrow, he ought to absolve him. But I always absolve him conditionally, unless I have some moral certainty about his disposition. 403. If a mute person knows how to write, according to our opinion (L. 6, n. 479, v. Quær.), he is bound to confess by writing; for he who is bound to an end, is also bound to the ordinary means. I say "ordinary," because writing would not be an ordinary means for a mute person, if otherwise he would have to undergo great labor to complete his confession, or if there could be a danger of exposure. 404. If ever a woman, who is deaf or hard of hearing, should approach a confessor, and the confessor, in the course of the confession, asking about the circumstances of the confessed sin, should notice that she is deaf, a doubt arises whether the confessor can say to her in a loud voice, so that she may return at another suitable time and place; this case often happens in missions, and greatly troubles the missionaries. I think that the following course of action should be taken: if the confessor knew of her deafness at the beginning of

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the confession, then he can freely tell her to return. But if he noticed it in the course of the confession, because the penitent answers the questions very inadequately, then the confessor cannot command her in a loud voice to return, so that those present may hear; for it would suggest to them that the penitent has confessed about some grave sin, or at least a sin that is doubtful as to its gravity; therefore, in that case, even if she has confessed about something mortal, if he recognizes that she is disposed, he should absolutely absolve her; otherwise, he should absolve her conditionally, for, since he cannot inquire about her disposition, nor (as I said) can he command her to return, he should impose a light penance upon her, so that that satisfaction may also be heard by others because of her deafness (l.c. n. 644, v. Petes.). §. V. How he ought to behave with the dying. 405. The confessor, in receiving the confessions of the dying, should not proceed so strictly concerning the number and circumstances—

[*Latin ed. p. 562*]

Thus; especially if a priest has already arrived with the Viaticum, or if a physician is present, so that the Viaticum may be received promptly; in such a case, it is better to attend to the disposition of the penitent, rather than to the integrity of the confession. It suffices then to impose upon the sick person, so that, when he recovers, he may repeat the confession. And let the penance be the lightest, imposing a proportionate one for the time during which he will recover; or it will suffice to order him to return when he is in good health. Those who are wounded, and women in childbirth, who are ordinarily unable to be attended by others, it suffices that they accuse themselves generally of their sins, and in particular of some slight fault, with the intention of confessing fully if they recover. Let the confessor be aware that if the dying person is able to fulfill some restitution, which he is able to perform at that time, he must impose upon him to do so immediately; and it is not sufficient that he leaves this obligation to his heirs; otherwise, he should not absolve him (Observe the author of the Instruction for confessors in Terre, and Vilagge, no. 14). 406. If, however, the sick person were about to experience a very great disturbance of mind, upon hearing that he must receive the Viaticum, it is probable (Book 6, no. 285, Doubt 4) that the parish priest may offer the Eucharist to him, omitting the usual words: "Receive, brother, the Viaticum, etc.," but using the ordinary words of communion: "May the Body of Our Lord Jesus Christ preserve you, etc." 407. If, then, the confessor observes that the dying person is in a state in which he should receive the Extreme Unction, and he refuses it; let him explain to him the great effects of this Sacrament, which provides great strength to the soul to resist the temptations of demons in the final struggle; it absolves him from venial sins, and even from mortal sins, if they are hidden, and moreover, it brings health to the body, which is beneficial to the salvation of the soul; but it will not bring this health if the

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dying person has become so ill that he can only recover through a miracle; because the Sacrament acts only through the ordinary means, by assisting natural causes. If, however, despite this, the sick person does not consent, and continues to refuse to be anointed, it is very probable that several Doctors teach (loc. cit. no. 733), that he is sinning mortally, at least against charity towards himself, since he deliberately deprives himself of so much help in such a great need. § VI. How should one behave with those who are condemned? 408. With these, the greatest charity and patience must be shown. The first time that the confessor visits the condemned person, he should begin by telling him that this death is a gift from God, who wants to save him. He should say that we are all destined to leave this world, and that soon, we will arrive at eternity, which has no end. From this, he should speak to him of the blessed life of the saints, and of the misery of the damned. Then he should encourage him to give thanks to God, who has waited for him until that time: and did not allow

[*Latin ed. p. 563*]

Let him remain in that state as long as he was in sin. Finally, let him be led to accept death with a joyful spirit, by associating it with the death that Christ, the Lord, suffered for His love. And let him be comforted by saying that, by accepting death for his sins, he is certainly saved, and saved with great merit, for which he will be greatly rewarded in heaven. Afterwards, let him be encouraged to confess, and to freely reveal all his sins. He should be asked, above all, whether he harbors hatred towards anyone? And whether he keeps consecrated hosts, or holy oil, or superstitious writings? He should also be asked whether he has entered into any pact with a demon? After absolving him, let him take care that he receives Holy Communion frequently; and let him also be reminded to commend himself frequently to the Mother of God, so that he may obtain a good death. As the condemned man goes from the prison to the gallows, let him say to him: "My son! Follow Jesus Christ, who has gone before you to Calvary, to undergo the death that He loves so much for you." When he has reached the place of execution, let him be reconciled and absolved again; let him be reminded to gain an indulgence, and then let him say: "My N., be of a joyful spirit, for you are now in the grace of God; the gates of Paradise are now open to you, where Jesus and Mary await you. Join your death to the death of Jesus, who, for your love, died bleeding amidst mockery and torments. Do you love Him? Say it with me: 'Lord, above all, I love you; I want to die to do your will. Having accepted death for my sins, I hope that you have forgiven me; I repent of having offended you again. I long to come quickly to heaven, to kiss your feet, and to love you eternally.' As the hood is placed over the condemned man's eyes, and he ascends the scaffold, let him say to him: "My son, invoke the Mother of God, that she may assist you. Offer your death for your sins. Declare that you do

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not wish to consent to any temptation of the devil." After he has ascended the scaffold (while the sentence of execution is being read), let him say: "Behold Jesus Christ, who, with outstretched arms, awaits you to embrace you: 'Lord, I have offended you, I have displeased you; now I love you with all my heart. God of my soul, you call me, behold, I am coming. Mary, Virgin, help me. Lord, I commend my spirit into your hands. Jesus, and Mary, Jesus, Mary, Joseph.'"

409. But if the condemned man stubbornly refuses to confess, what should be done?

1. The confessor should seek to help him through prayers, and he should take care that he also commends himself to God through others, especially through religious communities, so that they may help him through Masses and prayers.

2. Let the condemned man be informed that, whether he repents or not, the sentence will be carried out.

3. Ask him whether he perhaps despairs of his salvation, because he has given his soul to the devil? In this case, let him be encouraged, that such a pact has no force, because God alone is the Lord of the soul, and as soon as he revokes his wicked will, God forgives him all his sins.

4. Ask him whether he harbors hatred towards anyone, from which his obstinacy may arise. Furthermore,

[*Latin ed. p. 564*]

It should be noted that, at the very first times when speaking to someone so obstinate, one must not insist that he immediately confess, for he will become even more obstinate. It will be better to speak with him about death, to which all are subject; about the mercy of God; about the punishments of hell, and about the joys of paradise. He should recount to him the example of some sinner who died impenitent; or of someone condemned to death who received a holy death, as was the case with him who, though innocent, was condemned, and when asked why he did not defend his innocence, replied: "And why? For so many years I have asked God to grant me the grace to die a shameful death, just as my Savior died for me; I have now obtained what I asked for, and would you now deny me this desired fate?" And thus, he went cheerfully to the scaffold. After saying these things, the confessor should leave the accused, so that he may ponder these things in his mind; and afterwards, he should inquire again, to see if he has changed, and say to him: "My son, your death is approaching, what do you decide? It is in your power to choose hell or heaven. Be aware that if you die obstinately, you will regret it for all eternity, but there will be no further remedy for such evil." If he still sees that the person is hardened, he should take care that those present pray for him; and especially that the Litany of the Blessed Virgin be recited, and then he should kneel before him, and beg

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that he not wish to perish. If he does not succeed in persuading him by speaking, he should turn to speaking to the Crucifix. Finally, if the accused has already arrived at the place of execution, he should implore the people to kneel and offer prayers for the obstinate person. It can also be helpful to terrify him by saying: "Depart, cursed one, into hell, since you wish to destroy yourself. But know that your punishment in hell will be all the more severe because of the memory of this time that God is granting you, and you are abusing it." But afterwards, he should resume a gentle tone. If someone who has already been condemned should then climb the scaffold and ask to confess, he should rebuke the ministers of justice, so that they may allow him to descend, protesting that they are then obligated to grant him that time to confess. However, this applies only to those who have not yet confessed; for if the accused has already confessed, then the confessor should urge him to elicit an act of contrition, and then he should question him in this way: "My son, do you not now intend to confess all your sins to me, and especially those that you have not told me?" And when the accused answers, he should impose the lightest penance on him (e.g., that he invoke Jesus and Mary), and absolve him.

§ VII. How the confessor should behave towards one afflicted by a demon.

410. Some who are possessed by evil spirits are tormented by horrible visions, or by bodily torments. The care for these is easy; one should encourage them with prayer, patience, and above all, conformity to the divine will. The confessor should not be so incredulous as to judge that all these invasions are not real.

[*Latin ed. p. 565*]

Either the infestations are the work of demons, or they are bodily infirmities; for it cannot be denied that true cases of possession also exist among Christians. Indeed, the Church has instituted many exorcisms against such invasions, the practice of which has always been in use within the Church, as the Council of Trent (Tridentinum, Session 23, Chapter 2) testifies. Furthermore, if possessed individuals did not exist, the order of Exorcists would have been instituted in vain, an order by which power is conferred over demons and catechumens (which certainly cannot be supposed); and indeed, this order is one of the seven that have always existed in the Church of God, as the same Council declared. Moreover, it is always advisable to suspect such invasions; for it cannot be denied that the majority of them are either fabrications, or imaginations, or infirmities, especially in women.

444. However, those who more often trouble the confessor with serious difficulties are those who are tormented by demons with foul visions, movements, and even touches, who not only stir up carnal desire, but sometimes even have carnal intercourse with them in the form of a man or a

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woman, and are therefore called succubi or incubi. Some have denied that these demons, incubi, or succubi exist; but generally, the authors affirm it, as Martin Delrio states in his work *Disquis. Magic.*, Part I, Chapter 15; Cardinal Petrucci in *Epist.*, Part 2, Book 2, Opuscule 5, Chapter 45, paragraph 5; and Sixtus Senensis in *Bibl. Sacr. Annot.*, Book 5, page 77, citing St. Cyprian, St. Justin, Tertullian, etc. And St. Augustine confirms this most strongly in Book 45 of *De Civ. Dei*, where he writes: "The Scriptures testify that angels have appeared to men in such bodies that they could not only be seen, but also touched, and that many (whom they commonly call incubi) have often been wicked men who have approached women and committed adultery with them." Some demons constantly attempt and accomplish this impurity, and many such men affirm it, so that to deny it would seem imprudent. Indeed, demons could take on the bodies of the dead for this improper purpose, or they could assume a new form from the air and other elements, and fashion themselves into bodies that appear and feel like human bodies, and thus adapt those bodies for intercourse. Moreover, as Delrio states, citing D. Thomas, D. Bonaventure, Scotus, Abulensis, and others, a demon can even bring forth true seed received from elsewhere, and imitate the natural emission of it, and that true offspring can be born from such intercourse, if the demon is able to receive that seed, for example, from a man experiencing nocturnal pollution in his sleep, and by preserving the prolific heat, infuse it into the womb; in which case, that offspring will not be the daughter of a demon, but of the one whose seed it is, as D. Thomas says, citing the aforementioned author. Whether such things have ever happened, or can happen, given the laws established by divine providence for the propagation of the human race, we leave to the judgment of the wiser.

[*Latin ed. p. 566*]

It is doubtful whether a demon, with God's permission, can move the hand to pollute it through touch, without the fault of the person. Father Gravina, a Dominican, affirms this, and indeed, probably so; for if a demon can move the entire body of someone, as is narrated concerning Simon the Magician, who was lifted into the air by the power of a demon, why could it not also move the hand? Furthermore, if a demon can move the tongue of someone, so that they unwillingly utter obscene words or blasphemies against God, why could it not also move the hand to commit shameful acts? The same is the opinion of Cardinal Petrucci, *l. e. n. 8*, who says: It has not infrequently been demonstrated that a demon begins to possess some part of the human body in a certain way, such as the eyes, the tongue, or even the genitals. Hence, the tongue may utter the most obscene words, even though the mind is not aware of it at that time. Hence, impulses and affections sometimes arise, which lead to shameful acts. Hence, the most vile things, which I blush to write about. This is sufficiently confirmed by St.

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Thomas, *de malo, quaest. 3, art. 8, ad 9*, who teaches: Demons can cause people not to distinguish between species and things, to the extent that they disturb the internal sensitive powers, with which, when disturbed, the use of human reason is bound, which requires these powers for its activity, as is evident in the possessed. When the use of reason is bound, nothing is imputed to the person for the sin, just as nothing is imputed to a beast. Therefore, according to St. Thomas, the devil may not be the cause of sin, even if it is the cause of an act that would otherwise be a sin. Thus, according to St. Thomas, a demon can be the cause of a shameful act, and at the same time, bind the use of reason so that the act is imputed to the person only minimally for guilt. However, two propositions of Michael Molinos, condemned by Innocent XI, can be opposed to this. The first, *n. 44*, stated: Job blasphemed, and yet did not sin with his lips, because it was by the violence of a demon. The second, *n. 49*, which is more relevant to the case, stated: Job, by the violence of a demon, was polluting himself with his own hands at the same time that he was offering pure prayers to God. But it is replied that these two propositions are manifestly false: for the first is based on that text: "Let the day perish wherein I was born, and the night in which it was said: A man child is conceived." Job 3:3. Interpreters explain this text in various ways: Estius says that Job there wished that no mention of his birth should be made in the future because of his misfortune: "Let the day perish," that is, (according to Estius), "I am most unhappy, therefore let the day perish, and let no anniversary be remembered." Others, with Trino, say that Job, without blame, cursed the natural misfortunes as the causes of his suffering. What, then, do blasphemies and the violence of a demon have to do with this? Furthermore, it does not contradict, says Cardinal Petrucci, *loc. sup. cit.*, that a demon can move the tongue of a person to utter obscene words. Father John Baptist Scaramelli (in the life of the Venerable Sister Mary Crucifix) recounts that demons would compel her to blaspheme in this way: "They would stir up wicked affections in her, and then quickly move her tongue to utter blasphemies against those who were previously saints."

[*Latin ed. p. 567*]

And sometimes they used his hands to throw stones and sacred books (1). Then, he recounts the words of that same heretic, who, relating his own experience, wrote to his Director: "With this tongue, consecrated every morning by the Body of Jesus Christ, should I then curse? I feel as if I am dying, although I am without sin. The curses vary according to the solemnities, sometimes uttering heretical blasphemies, sometimes denying the mysteries of the faith, etc." The same must be said of the other proposition 49 of Michaelis Molinos; namely, that it is false, and moreover, scandalous, since Job does not speak of pollution, but only says: "These things have I suffered without the iniquity of my hand, when I offered pure prayers to

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God." Job 16:18. Malvenda explains: "As if to say, these things have come upon me without my fault." And Menochius: "When I raised my hands in supplication to God, which were neither stained by theft, nor by any other crime." I repeat, what does pollution, and the violence of a demon, have to do with these things? But how false were those two propositions! But regarding those propositions, the more proper and convincing answer is this. The propositions cited must be understood according to the meaning of the author who presented them. Some of Quesnelli's propositions seem, at first glance, to be equitable and holy, but according to his meaning, they are perverse. For example, § 1, Proposition 30 says: "All those whom God wills to save through Christ are infallibly saved." This proposition, in a correct and Catholic sense, is held by all who defend efficacious grace from within; but it is condemned in Quesnelli's sense, namely, that God wills only the salvation of the predestined. And so, it must also be said that the propositions cited 44 and 49 of Michaelis Molinos are condemned. This was the core of this impious system: that when a person gives his freedom to God, he should no longer resist evil impulses, nor make any effort to prevent bad actions; because these are to be attributed, not to his own will, but to the violence of a demon, or to sensual passion. And his fundamental proposition (which is number 47) says: "Having given to God the freedom of our will, and having left to Him the care and knowledge of our soul, we are no longer to consider temptations, nor offer them any resistance, except a negative one, without employing any effort." And if nature is stirred, it is necessary to allow it to be stirred, because it is nature. Another of his propositions (number 47) is more specifically related to our case, and it says: "When such violence occurs, it is necessary to allow Satan to work, without..."

(1) That is: After impious thoughts had stirred his mind, they would sometimes move his tongue in a celestial manner to curse, and at other times they would use his hands to throw stones and sacred books.

(2) That is: Should I curse with this my tongue, which is daily consecrated by the Body of Jesus Christ? I seem to be dying, although I am without sin. These curses vary according to the days, sometimes heretical blasphemies are uttered, sometimes the mysteries of the faith are denied, etc.

[*Latin ed. p. 568*]

By employing diligence and without any personal effort..., even if pollutions follow. Note the words: it is necessary to allow, without employing any effort, etc. But how can it be without fault to omit resistance in such disturbances, and to allow a demon to act, even if pollutions follow? Does not a clear concurrence of the will appear here? This is what Molinos stated, and all of his other condemned propositions must be understood in this light. Furthermore, why, with God's permission, cannot a demon compel a man,

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without any sense of his own will, to perform some evil act? However, as St. Augustine says, we cannot, through philosophical reasons and human reasoning, know to what extent the natural power of Angelorum extends: therefore, in this matter, we must be moved by more than philosophical reasons to judge the authorities of theologians, who speak according to the light received from Holy Scripture. We have in the Gospel of Matthew, that a demon can indeed impede the use of language: They offered Him a man possessed by a demon, who was mute; and when the demon was cast out, the mute man spoke. Matthew 9:32-33. Chrysostom says, according to Cornelius à Lapide: Hence, it appears that the demon made him mute, by hindering the use of his tongue. Just as a demon can hinder the human use of limbs, so it can move them without the will of a man. Also, in the same Gospel of Matthew, it is recorded that a demon transported Jesus Christ upon the pinnacle of the temple: Then the devil took Him up into the holy city, and set Him upon the pinnacle of the temple, and said to Him, "If You are the Son of God, cast Yourself down." Matthew 4:5-6. If, therefore, a demon could move and transport the entire person of the Lord, then much more can it move the tongue or hands of a man. Furthermore, we have in Daniel, that Habacuc was transported by an angel into the den of lions: And the angel of the Lord took him by the top of his head, and carried him by the hair of his head, and set him in Babylon, over the den, in the force of his spirit. Daniel 14:35. Note the words, "in the force of his spirit," which clearly denote the natural power of an angel. Hence, theologians rightly say that a demon can, by its own nature, with God's permission, agitate the limbs of a man. Besides the authorities of St. Thomas and St. Bonaventure mentioned above, several modern authors write the same. Cardinal Gotti writes: "The devil can indeed compel to an act which, by its very nature, is a sin, such as compelling those he possesses to utter blasphemous words, or even to other evil acts. But then, with bound reason, this is not imputed to the man as a sin, because freedom of will is lacking." Theol. tom. 2. tr. 4. de Vitiis q. 6. Wigandt writes the same, tr. 4. ibid. tit. Exam. 2. num. 69. at the end. Calmet also writes (an author whom everyone knows to be weighty in his statements); he writes in the dissertation that he appends to the Gospel of St.

[*Latin ed. p. 569*]

In Lucca, concerning the truth about the possessed, after having explained his opinion regarding the aforementioned power of the demon, this objection is raised against him. If the demon were to act of its own accord within a man, then two active principles would be present at the same time, namely, two spirits; but this is impossible, because one could act in a way contrary to what the other desires. He responds that, when the demon, with God's permission, acts within the human body, then at the same time (as also taught by St. Thomas) it hinders and binds the use

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of reason in the person. He does not doubt that Satan, by its natural power, can bind the freedom of a person and compel him, even against his own will, to utter blasphemies. Then, Calmet states that a sign that an action is the work of a demon is if a person is animated by a different spirit, is distressed unwillingly, admits things that are far removed from his own inherent nature, but admits them in such a way that everything appears and is violent. The same is written by the praised Father John Scaramelli in his *Directorio Myst.*, book 3, chapter 41, number 424, saying: "This can indeed happen without formal sin on the part of the person, if the demon, while acting externally, internally hinders all use of reason and takes away all freedom to resist (as St. Thomas says), moving the sensitive appetite with such vehemence and disturbing the mind so much that all light of reason ceases. Therefore, the confessor must examine the penitent to see if, in the things he experiences, he perceives any awareness of the malice of sin, and if he has any feeling that deters him from that action. If he says that then his mind is so obscured that he knows nothing and feels no remorse, then he can be judged to be free from sin; otherwise, if some light of reason shines through, which is not entirely hindered, so that he can indeed resist." Furthermore, the aforementioned author warns confessors to ensure that those who suffer from shameful impulses reveal such actions in confession; for these will scarcely be free from all guilt, even slight guilt, due to some imperfect awareness, or a lack of resistance that should have been employed.

442. If someone has ever been afflicted by the enemy with this kind of temptation (the spirit of fornication, from which the Holy Church especially commands us to pray to the Lord to deliver us), the confessor must strive greatly to protect the penitent from such a terrible thing.

(1) That is: "This can indeed happen without formal sin on the part of the person, when, indeed, at the same time that the demon acts externally, internally it hinders all use of reason and takes away all freedom to resist (as St. Thomas says), moving the sensitive appetite with extreme vehemence and therefore disturbing the mind so that all light of reason fails. Therefore, the penitent must be asked whether, in the things he experiences, he perceives any awareness of the malice of sin, and whether he experiences any impulse that deters him from that action. If he says that then his mind is so obscured that he knows nothing and feels no remorse, he can be judged to be free from sin; otherwise, if some light of reason shines through, which is not entirely hindered, so that he can indeed resist."

[*Latin ed. p. 570*]

The conflict is great; for the learned Cardinal Petruccius says that these souls are in great danger if remedies are not applied with much efficacy, and sometimes even extraordinary ones: for when great help from God is required to resist, and great violence from the patient, it will be difficult

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for one to emerge victorious from such a struggle; and if one does not add great mortification, and above all, fervent prayer, commending oneself a hundredfold and a thousandfold, groaning and begging for mercy at the feet of the Crucified and the Mother of God. Otherwise, if the soul grows lukewarm and fails in prayer, or in mortification, Petruccius says that it will be in great danger of falling, at least indirectly, into some hidden indulgence of those vile delights. Therefore, as we come to the remedies, if the confessor judges that there is absolutely no fault in this temptation on the part of the penitent, he should first of all advise him to use these means: let him help himself with fervent prayers, frequently invoking the most holy names of Jesus and Mary; let him diligently turn away from the pleasures of the senses; let him frequently receive Holy Communion; let him often declare that he does not wish to consent to any sin or delight that he feels is the work of the demon; let him often make the sign of the cross (and also carry it with him), and use blessed water, sprinkling it upon his bed and room; let him also carry with him a relic of the Saints, and a book of the Gospels; let him also use private exorcisms, saying: "Evil spirit, in the name of Jesus Christ, I command you to depart from me, and not to torment me any more." Furthermore, let him be encouraged to humble himself often, and to practice such acts of humility frequently; for sometimes, in order to remove some internal pride from the soul, God permits such temptations.

443. But if someone miserably falls into these temptations, or seeks out their occasions rather than avoiding them, their cure is very difficult; for such sinners, who have dealings with a demon, are very difficult to convert from the heart. On the one hand, the demon acquires a certain dominion over their wills; and on the other hand, they themselves remain too weak to resist; they need extraordinary grace from God, but God rarely grants this to such wicked people. However, if such a person comes to the confessor, he should not despair, but should use the utmost charity with him, and encourage him, saying that where there is no will, there is no sin; therefore, if he resists with his will, he sins very little. In these cases, the confessor should first of all perform an exorcism against the demon, at least a private one: which is certainly permitted (L. 4, n. 493, de adjuratione) in this way: "I, as a minister of God, command you, unclean spirit, to depart from this creature of God." Then he should ask the penitent whether he has ever invoked the enemy, and whether he has entered into any agreement with him? Whether he has ever denied the faith, or performed any act against it? He should ask in what form the demon appears to him, whether as a man, a woman, or a beast. Then, if he has co...

[*Latin ed. p. 571*]

Besides the sin against chastity and religion, the accused will be guilty of the sin of fornication, or sodomy, or incest (understand, affective), adul-

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tery, or sacrilege. Furthermore, he will be questioned as to where and when he had such dealings. Afterwards, he will show him the enormity of such a crime, and urge him to make a true conversion and to make a complete confession; for these lost men, even if they confess, easily commit sins. Finally, he will prescribe to him the same remedies mentioned above, namely, that he should often turn to God and the Blessed Virgin; that he should frequently invoke the names of Jesus and Mary; that he should use holy water and the sign of the cross; that he should carry with him a relic and the Gospel; and that he should often recite the exorcism, as mentioned above. Afterwards, he should postpone giving him absolution, but encourage him to return often, so that he may learn how to resist the attacks of the enemy, and how to apply the remedies; and he should not absolve him unless after a long period of time, for such conversions, as we have said, are rarely true, and even more rarely enduring.

CHAPTER VIII. On the prudence of the confessor.

I. In choosing opinions.

II. In correcting errors committed by himself.

III. In safeguarding the sacramental seal.

IV. In receiving confessions from women, and in dealing with them.

444. I. THE CONFESSOR must use the utmost prudence in choosing opinions.

Here, I will not speak of the question that is so controversial today, whether it is permissible to follow a less probable and less safe opinion when a more probable one is available? Many authors, and especially those learned writers who have recently written about it, have spoken extensively about this; and I would have wished that they had taught us the truth with reasons, rather than with acrimonious arguments. I will only repeat what I said above in numbers 65 and 69, namely, that when it is a question of avoiding a formal sin, the confessor should, as far as possible, follow the more lenient opinions; since only the formal sin is an offense to God. But when lenient opinions expose the penitent to the danger of a formal sin, then the confessor should follow the stricter opinions, because in this case they are more salutary to the penitent. However, when the penitent wishes to use a probable opinion, and is already disposed to do so, then the confessor is bound to absolve him, because, by reason of the confession already made, the penitent has a certain and strict right to absolution, so that he should not be forced to receive it from another priest with the very grave burden of repeating the confession. This opinion is common, and is admitted even by many authors of stricter opinions, such as Pontassus, Cabassutius, and Victoria.

[*Latin ed. p. 572*]

And especially St. Antoninus. See the book, in which this is demon-

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strated (L. 6, n. 604). 445. This is even more the case when the confessor wishes to obligate the penitent to make some restitution, to which the latter is probably not bound (Lib. 4, n. 669). Indeed, this applies even if the confessor did not have a solidly probable opinion of the penitent, and the penitent was not ignorant, and held the opinion, along with other grave doctors, as probable, so that the penitent already forms a right conscience about doing good. However, it must be understood that this applies when the penitent's opinion has some (as I said) apparent probability; for if the confessor considered it to be entirely false, because he had some certain principle or reason against it, against which he believed there was no response that could lead one to doubt the certainty of his own judgment, then he should not, and cannot, absolve the penitent who does not wish to comply (See Lib. 6, n. 604). However, if the confessor foresaw that his admonition would not be beneficial to the penitent, but rather would bring about the formal sin that is only material in the penitent, then he should conceal it, except in certain cases; see what was said above, n. 8 and 9. 446. II. If, at some time, the confessor commits an error concerning the value of the sacrament without his fault, he is not bound by justice to admonish the penitent, but only out of charity, which does not obligate with grave inconvenience (Lib. 6, n. 649 and n. 620); provided that the confessor is not the parish priest, who would be bound to repair the serious damage to his subject; and provided that the penitent is not in danger of death, or in danger of ceasing to confess, because then charity obligates even with grave inconvenience. But if the confessor has committed a serious fault in this matter, then he is always bound, even with grave inconvenience, to correct the error (and especially if he leaves the penitent in a near opportunity); unless the penitent has confessed to others, or at least has received the Holy Eucharist. But without the consent of the penitent, the aforementioned admonition should never be made outside of confession; whenever it could bring him some harm. If, however, the error is only about the integrity of the confession, for example, because the confessor did not ask the penitent about the species, or the number of sins, even with his fault; the confessor is not bound to correct that error outside of confession, because in this there is always the penitent's embarrassment, when he hears his sins being recalled to him again. But if, through his malice, or culpable ignorance, he has excused the penitent from restitution, or has unjustly obligated him to it; then he is bound to admonish him, first obtaining permission; otherwise, he himself is bound to make the restitution. But if he has not committed a serious fault in this matter, he is not bound to admonish him with his grave inconvenience; but if he could repair the error without his grave inconvenience, and he

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did not, then he is also bound.

[*Latin ed. p. 573*]

Restitutions. Finally, if the confessor fails to admonish the penitent regarding restitution, he is not obligated to make the restitution himself, even if he were a parish priest, and even if he had committed a grave fault in this matter. See the book (loc. cit. n. 621), where all of these matters are discussed with their reasons and authorities, DD. 447. III. The confessor must also be exceedingly prudent in guarding the seal of the sacrament. It is already known and certain that the confessor can never speak of things heard in confession, whenever there is a danger of the seal being revealed (either directly or indirectly), or of causing harm to the penitent; and this applies even if he only suspects that he may have heard something in confession, or in relation to confession (Lib. 6, n. 636). Nevertheless, the confessor is not prohibited from speaking (in general terms) about some sin heard in confession, whenever others could not come to know about the penitent, or whenever he has express permission from the penitent. Nevertheless, even in this case, one must proceed with the utmost caution: 1. Never speaking about sins heard in confession, before simple people, who might suspect a revelation of the confession. 2. Never saying in sermons, that some vice reigns in that city, which he has learned through confessions to be more prevalent there. (However, this is understood (loc. cit. n. 654), when he does not know this from any other source, and when the place is small), and especially if he is preaching in a monastery, in which case he should not vehemently denounce any defect that he has heard to be common there in confession. 3. The confessor should not be too insistent in obtaining permission from the penitent, because he cannot use that permission, which is not entirely spontaneous and fully free. Therefore, he should be as sparing as possible in seeking such permissions without a special necessity; and it is safer to suggest to the penitent that he speak about what is necessary outside of confession. 4. No one is ignorant that, outside of confession, the confessor cannot even speak with the penitent himself about things heard in it, without his express permission; but within the very confession, he can certainly speak about them, whenever he believes it to be beneficial to the penitent (loc. cit. n. 652). 448. However, in the case where the penitent is obligated under a grave necessity to reveal the name of an accomplice, in order to repair some common damage (Ibid. n. 294), contrary to the opinion of others, even then the penitent cannot be obligated by the confessor to reveal the name of the accomplice to him, but only can and should impose upon the penitent the obligation to reveal the accomplice to those who can prevent scandal. If the penitent were to wish to reveal the accomplice to

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the confessor, then he can certainly hear him, and

[*Latin ed. p. 574*]

It is most necessary to repair the damage. Furthermore, it must be noted that confessors should inquire, without being prohibited from doing so, about the circumstances of the penitent, so that they may understand whether a different species of sin is present, or in order to advise the penitent for their salvation. Hence, they can rightly ask: is he married? is he bound by a vow of chastity? does he live in the same house? is she a servant? and similar things. Even if, through these questions, the identity of the other party must be indirectly revealed; nevertheless, the name of that person should never be inquired about (Ibid.).

449. IV. The confessor must be exceedingly cautious in receiving the confessions of women. And first, it must be noted that in the Decree of the Holy Council of Bishops, January 21, 4610, it is said: Confessors should not, without necessity, hear the confessions of women after evening twilight and before dawn. Speaking of the prudence of the confessor, he should, as a general rule, be stricter than more lenient with younger women; nor should he allow them to approach the confessional to speak with him, and much less to kiss his hand. During the act of confession, he should not show that he recognizes them; for some, who wish to be considered religious, sometimes, realizing that they are known by the confessor, do not make a complete confession. It is also imprudent to look at the penitents as they leave the confessional, and to observe them for some time. Outside the confessional, he should also not allow himself to converse with them in the church, and should avoid all familiarity. He should also abstain from receiving gifts; and especially, he should never go to their homes; except in the case of serious illness, and then only if called; then he should use great diligence in hearing their confessions, leaving the door open, sitting in a place where he can be seen by others, and never taking his eyes off the face of the penitent. This is especially important if they are spiritual persons, with whom there is a greater danger of attachment. The Venerable Father Sertorius Capotus said that the devil, in order to bring together spiritual persons, initially uses the pretext of virtue, so that later, affection may pass from virtue to the person: hence, St. Augustine says, through St. Thomas (Opusc. 64, de Famil. Dom. etc.): "A short and strict conversation should be had with these women; nor, because they are saints, are they to be less guarded, for the more holy they are, the more they attract." And the Angelic Doctor adds: "Although carnal affection is dangerous to all, it is more pernicious to them, when they are with a person who seems to be spiritual; for although the beginning may seem pure, such frequent familiarity is a domestic danger; and the more this familiarity grows, the more the principal motive is weakened, and purity is stained." And he adds that such persons do not immediately realize this; because the devil does

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not initially send poisoned arrows, but only those that sting a little, and increase the affection. But soon, such persons become so that they...

[*Latin ed. p. 575*]

Moreover, they converse with each other as if they were angels, just as they had begun, but as if clothed in flesh; they look at each other and offer each other flattering words, which still seem to proceed from their initial devotion: thus, one begins to desire the presence of the other; and thus, (it concludes), spiritual devotion is converted into carnal desire. Indeed, how many priests, who were previously innocent, have, through similar attachments which began in the spirit, lost God both in spirit and in truth! Let it be noted here that, according to the Decree of the Sacred Congregation of Bishops, under date of January 24, 4610, confessors are not obliged to hear the confessions of women after evening twilight, nor before dawn. 420. Furthermore, the confessor should not be so attached to the confessions of women that he refuses to hear those who come to him, namely men. Oh, what misery it is to see so many confessors who spend a good part of the day hearing certain religious women, whom they commonly call "Bizocas," and who, when they see men or married women approaching them, who are full of anxieties and troubles, and who have scarcely been able to leave their homes and businesses, dismiss them, saying, "I have something else to do, go to others"; and thus, these people, not finding anyone to whom they can confess their sins, live for many months and years without the sacraments and without God. This is not hearing confessions in order to please God, but rather, in order to serve a demon; and I do not know what merit those confessors will have with God who exercise their ministry in this way. I know, and indeed, contrary to the opinion of others who assert that it is a waste of time, that it is a work very dear to God to direct souls to the path of perfection; therefore, I will speak more fully about this in the last chapter; but I maintain that good confessors, who only hear confessions in order to please God (as is customary with St. Philip Neri, St. John of the Cross, St. Peter of Alcantara, and others), when they see a soul in need, should prefer that soul to those devoted souls to whom they are accustomed to minister, so that, when the confessor wishes, time will not be lacking to help them.

CHAPTER IX. How a confessor should behave in guiding spiritual souls.

424. As the Lord once said to Jeremiah: "Behold, I have made you a king over nations, to root out, and to pull down, and to destroy, and to throw down, and to build, and to plant:" so now He repeats this to each confessor, who must not only uproot vices from his penitents, but must also instill virtues in them. Therefore, it is fitting to add here, at the end of this chapter, what may serve confessors who are beginners in guiding

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souls to perfection.

[*Latin ed. p. 576*]

Indeed, sinners must be expelled, as we have said above, but, on the contrary, it is also a work highly pleasing to God to adorn the bride, that is, to cultivate spiritual souls, so that they may be wholly His and surrender themselves to Him. A single, perfect soul is more pleasing in His sight than a thousand imperfect ones. Therefore, when a confessor sees a penitent living free from mortal sins, he ought to exert every effort to lead him on the path of perfection and divine love, by showing him the merit that God has to be loved, and the gratitude that we owe to Jesus Christ, who loved us so much as to die for us; and also by showing him the danger in which all souls are, who, being called by God to a more perfect life, resist. Therefore, the direction of the confesssor is primarily focused on spiritual souls, namely in meditation, contemplation, mortification, and the frequent reception of the Sacraments, and we shall speak of each of these individually. § I. Of the prayer of meditation. 422. Therefore, a prudent confessor, when he sees a soul abhorring mortal sins and desiring to progress in divine love, must first of all prepare that soul to make mental prayer, that is, to meditate on eternal truths and divine goodness. And although it is not necessary for attaining eternal salvation, as prayer itself is necessary; nevertheless, it seems very necessary for souls, so that they may persevere in God's grace. With other works of piety, sin can coexist; but prayer and sin cannot coexist. The soul will either abandon prayer or sin. St. Teresa said: "I am certain that the Lord will lead to the port of salvation any soul that perseveres in prayer, no matter how many sins the devil opposes to her." And therefore, the devil seeks to hinder no other exercise so much as that of prayer, because, as the same Saint says, "the demon knows that he will certainly lose the soul that perseveringly devotes herself to prayer." Furthermore, it is love alone that joins and binds the soul to God; but the furnace in which the flame of divine love is kindled is prayer, or meditation: "My heart grew hot within me." Ps. 38:4. 423. Therefore, the confessor should begin to introduce the soul into prayer. At the beginning, he should assign no more to half an hour, which he will then increase or decrease as the soul's spiritual growth progresses. He should not desist even if the penitent finds it difficult to find the time and place to collect himself; rather, he should urge him to, at least in the morning or evening, when there is more quiet in the house, or even in the midst of his occupations (when he cannot do otherwise), to raise his mind to God and meditate on the truths of the faith; such as are the last things, the contemplation of which, and especially the thought of—

[*Latin ed. p. 577*]

It is suitable for beginners. He should also meditate on the Passion of Christ, a meditation that is fruitful for all. If, however, the penitent is not

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unlearned in letters, it is fitting that he make use of some spiritual book, so that he may more easily enter into prayer, as Saint Teresa used to do. He should also be instructed to choose that matter in which the soul experiences greater devotion, and, in those places where the soul feels itself more strongly moved and touched, he should linger for a time, and, after leaving the meditation, he should exercise himself entirely in acts of the will, either by making petitions, or by fulfilling resolutions. I say, 1. he should exercise himself in performing acts, namely, of humility, of thanksgiving, of faith, of hope, and especially in repeating the acts of contrition and of charity towards God, offering himself entirely to Him, and surrendering his entire and most holy will to Him, and repeating that act to which the soul feels itself most inclined. I say, 2. he should exercise himself in making petitions, for all our good depends on petition, and Saint Augustine says that God ordinarily grants no grace to men, and especially the grace of perseverance, except through the channel of petition. The Lord said: "Ask, and you shall receive." Therefore, Saint Teresa concludes, he who does not ask, does not receive. Therefore, if we wish to save our souls, it is necessary always to pray, and above all to ask for perseverance and for love of God. Indeed, there is no time more opportune for making petitions than the time of mental prayer. He who does not pray, finds it difficult to petition, because he finds it difficult to consider the graces of which he stands in need, and the very necessity of petitioning; and therefore, he who does not pray, finds it difficult to persevere in the grace of God. I say, 3. he should be instructed to ensure that reason does not remain unfruitful, and that the soul puts into effect those insights which it receives in prayer; hence, as Saint Francis de Sales says, no one should bring his prayer to an end, unless he has first made some particular determination, for example, to avoid certain more usual defects; or to exercise some virtue in which he knows himself to be weaker. This matter will be considered further towards the end of this section, when we speak of instruction for mental prayer, § III, 424. Therefore, the confessor should ask these souls to give an account of their prayer; inquiring of them how they have conducted themselves in it, or at least, whether they have practiced it; and he should urge them to accuse themselves in confession, before all other things, of having omitted prayer, when they have interrupted it; for, without prayer, the soul cannot be saved. The soul that omits prayer (Saint Teresa said) places itself, as it were, in hell, without the intervention of demons. Oh God, and what benefit do confessors bring to souls by exercising this small diligence! And oh, what account will they render to God, if they do not act in this way, since they are bound to strive, as far as is in their power, for the spiritual progress of their penitents! Oh, how many souls could they themselves lead to the

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path of perfection, if they would!

[*Latin ed. p. 578*]

and to free those who relapse into grave sins, if they were to employ this method with diligence, guiding them through the way of prayer; and afterwards, at least in the beginning of their spiritual life, to inquire whether they have done so, or not! When a soul has become established in prayer, it is very difficult for it to lose the love of God; and therefore, mental prayer should be encouraged not only among the fearful, but also among sinners, who often, through a lack of consideration, return to their vomit. 425. Above all, confessors should exercise diligence in this regard, when penitents experience spiritual desolation. When a soul is given over to spiritual life, God often attracts it with certain special lights, tears, and other sensible consolations; but after a time, He often closes this channel, in order to test their fidelity, and to raise them to greater perfection, by withdrawing from them all sensible sweetness, to which the soul easily clings, not without some impurity and fault arising from love of itself. Sensible consolations (and supernatural attractions) are indeed gifts from God, but they are not God Himself; therefore, He, in order to nourish souls dear to Him, and to lead them to love the Giver with purer love, causes it to happen that they no longer find in prayer the accustomed nourishment, and the usual consolation; but rather, boredom, aridity, torments, and sometimes even temptations. Therefore, the confessor must be exceedingly vigilant in encouraging these souls, so that they do not abandon prayer, and the prescribed Communions; he should remind them of the words of St. Francis de Sales, namely: It is more profitable before God to offer a single ounce of prayer in the midst of desolations, than a hundred pounds in the midst of consolations. For he who loves God for the sake of consolations, loves the consolations of God more than God Himself; but he who loves God and adheres to Him without those consolations, shows true love. This is sufficient regarding meditation, but I consider it appropriate to provide some knowledge here to new confessors concerning infused contemplation, and its degrees, as well as other supernatural gifts, together with the rules prescribed by the masters of spiritual life, for the guidance of souls to whom God has been pleased to grant such graces. § II. Concerning the prayer of contemplation, and its various degrees. 426. When a soul is given the grace of contemplation by God, it is necessary that the confessor should know well how to guide it, and to free it from all illusions; otherwise, he will do it great harm, and will render a great account to God, as St. John of the Cross says. Contemplation differs greatly from meditation. In meditation, God is sought through the labor of discourse; in contemplation, God, who

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has already been found, is contemplated without such labor.

[*Latin ed. p. 579*]

The soul operates through actions of its powers; in contemplation, God acts, and the soul simply receives, and receives within itself the gifts which divine grace infuses, without it doing anything, because the very light, and the divine love with which it is then filled, render it sweetly attentive to contemplating the goodness of God, who bestows so many gifts upon it.

It must also be noted that God, before granting souls the gift of contemplation, often introduces them into a state of recollected prayer, commonly called *di Raccoglimento*, or contemplative leisure (thus they call it, the mystics), which is not yet infused contemplation, because the soul is still in an active state. This recollection (I speak here of the natural, because we will speak of the supernatural and infused later, n. 433) is when the intellect does not need to work, as if going outside the soul, to consider some mystery, or eternal truth, but, being withdrawn from external things, and collected as it were within the soul itself, without effort, indeed with great sweetness, it attends to that truth, or whatever mystery it may be. Contemplative leisure is almost the same, except that in recollection, the soul attends to some particular, devout thought; in leisure, however, it feels within itself a certain general knowledge of God, and is sweetly drawn to God. In this recollection, or contemplative leisure, some mystics say that, although this prayer is natural, nevertheless the soul must cease not only from meditation, but also from the actions of the will, namely, love, offering, resignation, etc., and must remain only in a certain vigilance of love, and attention to God, without performing any action. However, I cannot entirely agree with such statements. It is certainly true that when the soul feels itself recollected, it should not apply itself to meditation, because it has already, without any effort, found whatever it was seeking; moreover, as Father Segneri says in his excellent work on the harmony between labor and leisure (Part 4, ch. 4, n. 4), ordinary meditation, after some time, produces what is called acquired contemplation, namely, that which knows truths solely through intuition, which it previously knew only through a long process and effort. But despite this, I do not know why the soul should cease from good actions of the will: and what more opportune time could there be for performing these actions than when the soul feels itself recollected? It is true that St. Francis de Sales gave advice to Blessed Joan of Chantal, that in her prayer, when she felt united to God, she should not repeat new actions; but why? Because, indeed, the Blessed had already reached passive contemplation. Therefore, when the soul is still in an active state, there is no reason why good actions should hinder the operation of grace. St. Francis de Sales also prescribed to the devout souls he directed a certain number

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of aspirations of love, to be performed within a certain time. When...

[*Latin ed. p. 580*]

The soul arrives at a state of passive contemplation; then the soul does not merit, because at that time it does not work, but only suffers. Nevertheless, it acquires a certain great strength to work later with greater perfection. But when the soul is still in an active state, in order to merit, it must work, by performing good acts; and these are the works by which the soul merits divine grace. Therefore, the same Father Segneri rightly concludes that when God speaks and acts, it is necessary that the soul be silent and cease from its own operations, putting forth from its side, at the beginning, only a certain attention of love towards the divine operations; but when God does not speak, it is necessary that the soul help itself in every way it can to unite itself to God, namely, through meditations (when they are necessary), affections, prayers, and resolutions, provided that these acts are not elicited unwillingly; hence, they must only be performed in those things in which the soul feels itself pleasantly inclined.

428. Furthermore, it must be noted that God, before introducing the soul into the prayer of contemplation, often purifies it, placing it in a supernatural aridity, which is called spiritual purgation, in order to purify it from its imperfections, which hinder contemplation. And here, a distinction must be made between sensible aridity, which pertains to the senses, and substantial aridity, which pertains to the spirit. Sensible aridity (of substantial aridity we shall speak in the following number), when it is natural, brings with it a certain boredom of spiritual things, and a certain lighter obscurity, and less durable; but when it is supernatural, of which we are speaking here, it places the soul in a certain deeper obscurity, which lasts longer, and daily receives greater increase. Nevertheless, the soul, being in such a state, although it feels itself more alienated from creatures, and has its thought always fixed on God, together with a great desire, and determination to perfectly love Him, nevertheless feels itself rendered, as it were, impotent to accomplish this, because of its imperfections, for which reason it seems to have become odious to God; but meanwhile, notwithstanding this, it does not cease to conduct itself properly in virtues. This troublesome aridity is a certain exercise of grace, it is a certain supernatural light, but a light that brings punishment and obscurity, because, wishing to communicate with the naked Spirit, and finding the senses and powers of its soul not yet capable, because they are not yet completely detached from sensible consolations, and consequently from material things, which are full of forms, images, and figures; it produces in the soul such darkness, so troublesome, but very useful, because through these, the soul arrives at a certain alienation from all sensible pleasures, both earthly and spiritual, and moreover, acquires a great knowledge of its own miseries, and its impotence to accomplish any good work, and at the same time, great

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veneration for God, who is presented to it as venerable and terrible. In this state, Di-

[*Latin ed. p. 581*]

The director ought to strengthen the soul to hope for great things from God, and he acts towards it in this way. He should suggest to it that it should not try to exercise itself in meditation, but rather that it should humble itself, make an act of offering, and surrender itself entirely to God, perfectly resigned to the dispositions of His will, which are all directed towards our good.

429. After this purification of the senses, the Lord often grants the gift of contemplation, which is called joy; that is, supernatural recollection, quiet, and union, of which we shall speak later; but before this union, and after recollection and quiet, the Lord often purifies the soul with the ardor of the spirit, which is called substantial ardor, by which the Lord desires that the soul should annihilate itself entirely in itself. The ardor of the senses is the subtraction of sensible devotion, but the ardor of the spirit is a certain divine light, by which God makes the soul recognize its nothingness. And it is then that the soul finds itself in a certain more terrible agony; for although at that time it is more determined to conquer itself in all things, and more attentive to pleasing God, nevertheless, the more it recognizes its imperfections, the more it seems to be cast out by God, and abandoned as ungrateful for the benefits received. Indeed, even the spiritual exercises that it performs, such as prayers, Communions, and mortifications, distress it more; for since it performs all of these with great tedium and pain, it believes that all are deserving of punishment, and that it is making itself more odious to God. In fact, many times these souls seem to hate God very much, so that they believe that God has already rejected them as His enemies; and yet, in this life, He makes them experience the torments of the damned, and divine abandonment. And sometimes God permits that such desolations be accompanied by many other temptations, such as movements of impurity, anger, blasphemy, incredulity, and especially despair; so that these poor souls, in that great darkness and confusion, are unable to discern the resistance of the devil (which is, of course, present at that time, but is hidden from them, or at least is of doubtful reason, especially in the darkness), and they fear that they have already consented, and therefore they believe that they are abandoned by God all the more.

430. Therefore, the confessor, when he encounters one of these souls who is already progressing towards perfection; and who believes herself to be abandoned, should, above all, not be frightened by this confusion, nor by so many expressions of fear and despair; nor should he show himself timid or hesitant in any way, but should encourage her manfully, telling her that she should fear nothing. At that time, he should encourage her more than ever to trust in God, reciting to her those words that the Lord said to St. Theresa,

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namely, that no one loses God unless they know that they are losing Him. He should tell her that all those suggestions of blasphemy, incredulity, impurity, and despair are not consent, but punishments, which, if tolerated with resignation, will unite the soul more and more to God. He should tell her that God never hates the soul that He loves, and that is of good will. He should add...

[*Latin ed. p. 582*]

God thus deals with souls that He loves more. He tests His beloved with aridity and temptations (St. Theresa said). Although aridity may last throughout life, the soul should not cease to pray; for the time will come when all things will be made manifest to her. Oh, what a beautiful sentiment for a desolate soul! Therefore, she should be encouraged to be of strong spirit, and to manfully await great things from God, while He leads her along the safest path, namely, the path of the Cross. She should also be reminded to first humble herself, so that she may be worthy of such treatment from God, due to the defects of her past life; secondly, to surrender herself entirely to the divine will, making herself most ready to endure all things, or even greater things, for as long as it may please God; thirdly, to cast herself as dead into the arms of divine mercy, and to commend herself to the protection of the Most Blessed Virgin Mary, who is rightly called the Mother of Mercy and the Consoler of the afflicted. 434. The aridity of the senses continues until the soul, having its senses purified, is made fit for contemplation. But the aridity of the spirit lasts until the soul is made capable of divine union; although sometimes, even after union, the Lord allows the soul to return to this aridity, especially for this reason, that the soul may not neglect itself, and that it may repeatedly acknowledge its nothingness. 432. When the purification of the senses is complete, and the sensible aridity has reached its end, God places the soul in the state of contemplation. Contemplation is either positive or negative. It is positive when, through the benefit of divine light, the soul perceives some truth, either created, such as the unhappiness of hell, the happiness of paradise, etc., or uncreated, such as divine mercy, love, power, goodness. It is negative when the soul recognizes divine perfections not in particular, but in general, with a certain confusion, but which gives it a concept of a far greater magnitude of the divine; and thus, it also dimly recognizes some created truth, such as the horror of hell, etc. But let us proceed to the first stages of contemplation: these are the interior recollection of the spirit, and quiet; let us speak of union later. 433. Therefore, the first stage of contemplation is supernatural recollection. We have already spoken of natural recollection above, n. 427, which occurs when the powers of the soul are gathered together to consider God within itself; and it is called natural, not because the soul is able to accomplish it by itself; for every act of virtue, in order to merit eternal reward, requires the help of grace; and therefore, generally speaking, it

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is also supernatural; but it is called natural, because the soul is then in an active state, and operates through the benefit of ordinary grace. But supernatural recollection is that which is accomplished by God through the ministry of some extraordinary grace, and through which God places the soul in a passive state; thus, supernatural, or infused, recollection is properly said to occur when the gathering of the powers does not occur through the work of the soul itself, but through the benefit of light, which God...

[*Latin ed. p. 583*]

In this state, the soul should not be concerned with suspending the tranquil course that perhaps the light itself gently suggests: nor should it rely on considering particular things, or on making determinations that it can effect. Nor should it be too curious in investigating what that interior recollection of the spirit may be: but rather, it should allow itself to be guided by God to consider those things, and to perform those actions, to which it feels more drawn by God.

434. The second stage is that of quiet. In recollection, the power of love is communicated immediately to external senses, which God Himself causes to be gathered within the soul. But in quiet, love is communicated immediately to the spirit, in the very center of the soul: and the love itself is more ardent, and then spreads even to the external senses: but this does not always happen; hence it often happens that the soul has the prayer of quiet, but without any sensible sweetness. St. Theresa says (in her Life, chap. 14) that in this prayer, not all powers are suspended: indeed, the will is suspended, and remains as if bound, because at that time, no other object can be loved besides God, who draws it to Himself; but the intellect, and memory, or imagination, sometimes remain free, and run hither and thither. Hence, the Saint says (Camm. di perfez. p. 209) that the soul should not be saddened by this: "Let it laugh at its thoughts," she says, "and let it abandon them as if they were foolish, and remain in its quiet: and when the will is the mistress, it will draw back the thought to itself, without any effort on your part." If the soul wants to apply itself to grasping a thought, it will accomplish nothing, and will lose its quiet. In this state, the soul should apply itself much less than in recollection to making determinations, or to performing actions that it originates from itself: it should only perform those actions to which it feels gently drawn by God.

435. Let us now say something about the prayer of pure contemplation, namely, the negative contemplation mentioned above, which is far more perfect than the positive one. This negative contemplation is called *Clara Caligo*, because, due to the abundance of light of the intellect, it is obscured: just as he who gazes at the sun, blinded by the brightness of the rays, sees nothing, but only understands that the sun is a great light: so God, in this obscurity, infuses a great light into the soul, which causes it

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to understand not some particular truth, but to acquire a certain general, and confused knowledge of His incomprehensible goodness, from which the soul begins to form the highest idea of God, although it is a confused one. When the soul knows to some extent some of the divine perfections, it indeed conceives a high concept of His goodness, but the concept it forms is far better when it knows that the divine perfection cannot be comprehended. Cardinal Petruccius writes in his most learned letters that this prayer is called the prayer of darkness, because in this life, the soul is not capable of clearly understanding the divinity, and therefore...

[*Latin ed. p. 584*]

In this state, the soul understands without understanding; but it understands far better than by any other means of understanding. It does not understand, because, since God is not a thing that forms an image or a clear concept, the intellect cannot form an idea of Him, and therefore it understands nothing other than that it is incapable of understanding Him; therefore, this kind of understanding is called by the Areopagite: "Sublime knowledge of God through ignorance." In this prayer, all the interior powers of the soul are suspended, and sometimes even the external senses: so that the soul sometimes enters into a Spiritual Intoxication, which causes it to break forth into certain deliria of love, such as songs, cries, immoderate weeping, dances, and the like, as happened with Saint Mary Magdalene of Pazzi.

436. After these stages, the Lord leads the soul to union. The sole purpose of the soul here should be union with God; but in order for the soul to attain perfection, passive union is not necessary; it is sufficient for it to reach an active union. "Very few," says Saint Teresa, "are those souls that are led by God through supernatural ways: and we shall see many in heaven who, without such supernatural graces, will be more glorious than those who have received these graces." Active union is perfect uniformity with the divine will, in which, certainly, consists all the perfection of divine love; "Perfection," says Saint Teresa, "(Cono. dell' Amor di Dio) does not consist in ecstasy, but true union of the soul with God is union of will with the divine will. This union is necessary, and not the passive union; and those souls who have only the active union," says the same Saint, "in the oration 23, may have a merit far greater; because they suffer greater labor, and the Lord guides them as strong, and the consolations which they do not have in this life, He reserves to give them later in the other life." Cardinal Petruccius says that, without infused contemplation, a soul can indeed, by the benefit of ordinary grace, attain to the annihilation of its own will, and to its transformation into God, desiring nothing other than the will of God. And although it feels the movements of passions, these do not hinder that aforementioned transformation; hence, he adds, that since all sanctity consists in this, each one should desire nothing else, and ask from God,

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than to be guided by Him, and to accomplish His will in Him.

Saint Teresa, speaking of passive union, says (Mans. V. c. 4), that the soul, being in it, does not see, does not feel, nor does it perceive itself in this way; because from the abundance of light and love, that blessed darkness is formed, in which all the powers of the soul are suspended; the memory does not remember anything but God; the will is united to God with such love, that it cannot love any other object; and the intellect is so filled with light, that it cannot think of anything else, nor even of the grace which it is actually receiving; hence, it understands much, but it cannot perceive what it understands.

In summary, the soul, being in this state, has a clear and experimental...

[*Latin ed. p. 585*]

The knowledge of the present God, who joins Himself to the center of the soul. This union, as Saint Teresa says (Life, chap. 48), does not last long; it rarely exceeds half an hour. In other contemplations, of which we have spoken before, God presents Himself as being near the soul; but here, He is present; and the soul experiences Him as joined to it through a certain sweet contact. Therefore, the Saint says (Mansions, V, chap. 4), that in other contemplations the soul may doubt whether it is God, but in this one, it does not. Nevertheless, the confessor must warn her that she has not thereby attained to perfection, and therefore, the more she sees herself endowed by God with such graces, the more she should be humble, and detached from all things, diligently loving the cross, and living in complete conformity with divine dispositions, with constant fear lest her infidelities be punished more severely from that time on, because of the greater ingratitude with which they will be committed. Saint Teresa says (Mansions, V and VI) that she has known several souls who, having previously attained this state of union, afterwards fell headlong into mortal sins.

437. There are three kinds of union, namely: simple union, union of espousal, and consummated union, which is called the union of spiritual marriage. The simple union is that of which we have spoken thus far. Now, we must speak of the union of espousal. This union is usually preceded by vehement spiritual consolations, which is the purification of the spirit, of which we have already spoken (n. 428). In this union of espousal, there are three different degrees: ecstasy, rapture, and elevation of the spirit. In the simple union, the powers are suspended, but not the bodily senses, although these remain very weak in their operation. In the union of ecstasy, the use of the senses is also lost, so that the person does not see, does not hear, and does not perceive either cuts or burns. Rapture, on the other hand, is nothing other than a certain more powerful impression of grace, by which the Lord not only elevates the soul to union, but also seizes it with a sudden and violent movement, so that sometimes even the body is lifted, and becomes light as a feather. Elevation of the spirit is when the

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soul feels itself to be drawn away as if from the body, and lifted above itself with great violence, so that the soul at first experiences great fear. In the elevation of the spirit, both ecstasy are contained, because there is a loss of the senses, as well as rapture, that is, the violent movement. A certain person who has been given similar graces by God told me that in such elevations, it seemed to her as if her soul had been torn from her body, and lifted with such speed that it would complete ten million miles in any given moment, not without great terror, because she did not know where she was going; but afterwards, when she had settled down, she was enlightened to understand some divine mystery. But here arises a doubt: If in this union the powers and the intellect are suspended...

[*Latin ed. p. 586*]

Obscured by the abyss of light, the soul is unable to attend to the things it understands; and how, indeed, can the soul, by any means, comprehend and speak of that divine mystery? The mystics respond that, when God wills that the soul should understand some secret, or receive some intellectual or imaginative vision, He diminishes somewhat the light, so that the soul remains capable of knowing and understanding whatever God wills.

438. The most perfect union, which is said to be consummated, and greater than God can grant to the traveling soul in this life, is that which is called the spiritual marriage, through which the soul is transformed into God, and becomes one thing with God: just as a vessel of water poured into the sea becomes one with the water of the sea. And it must be noted that, in other unions, as the mystics say, the powers remain suspended; but in this one, they are least suspended; for the powers, purified from their sensibility and materiality, have already become capable of divine union, so that the will loves God most peacefully, the intellect rightly knows, and attends to this intimate divine union, which has already been made in the center of the soul, just as if someone were to gaze upon the sun, and without any offense to the eyes, would recognize the splendor of the sun.

Furthermore, it must be noted that this union is not transient, as are the two previous ones, but permanent; so that the soul habitually enjoys the divine presence already united to it, and enjoys it in stable peace: for passions trouble it no more; indeed, the soul perceives them as they show their faces; but it is not saddened, nor does it suffer any annoyance from them, like one who, dwelling above the clouds, might see storms occurring below, and yet not be touched by them.

439. It will not be out of place to say something about visions, locutions, and revelations, in order to distinguish between the false and the true. Visions are either external or imaginative, or intellectual. External visions are those that are seen with the eyes. Imaginative visions are those that are seen in the imagination, or the imaginative faculty. Intellectual visions are those that are not seen with the eyes, nor in the imagination, but by the intellect

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itself, aided by divine light, which infuses intelligible species; and this kind of vision, according to St. Theresa, is entirely spiritual; for it has no part of the senses, neither external, nor internal, which are the imagination and fantasy. It should be noted that the soul cannot perceive things presented to it with the eyes, nor with the imagination, except in a bodily appearance, even if they are spiritual substances; on the contrary, by the benefit of the intellect, only spiritual things are perceived, even if they are material; or, to put it better, they are known, not seen, but known far better than if they were seen with the eyes.

440. However, it must be noted that these visions can be produced by both God and the devil; which is to be understood also of the intellectual ones, as seems to be implied by St. John of the Cross (Ascent, book 2, stanza 24).

[*Latin ed. p. 587*]

Concerning what Cardinal Petrucci believes, although corporeal visions are much more easily produced, which, for the most part, and especially in women, are formed by the imagination itself. The signs for distinguishing true visions from false ones are: 1. If they come unexpectedly, without any preceding thought in the soul. 2. If, from the beginning, they bring confusion and terror, but afterwards leave the soul in peace. 3. If they are rare, because frequent visions are very suspect. 4. If they last only a short time, for, as St. Theresa says (Mansions, VI, chapter 9), "when the soul perceives for a long time something presented to it, it is a sign that it is rather an act of the imagination." A divine vision most often passes like a flash of lightning, but it remains firmly fixed in the mind. 5. A true vision leaves the soul in perfect peace and with a vivid awareness of its misery, not without a great desire for perfection; this is different from diabolical visions, which leave little impression and leave the soul in a certain dryness, disturbance, agitation of its own judgment, and with a keen longing for these graces. But, with all the above-mentioned signs, St. Theresa says (Ibid.), that there can be no certain security, because often a demon feigns quiet, thoughts of humility, and desires for perfection; all of which is uncertain as to its origin; for often the demon himself, in order to gain credence, suggests these things, so that he may eventually perceive the fruit and deceptions that he intends. Therefore, the director, speaking in a regular manner, should not prevent the soul from relating such visions to him, indeed, he should urge it to reveal whatever it sees, whether those things are true or false, as St. Theresa teaches (Mansions, V, chapter 9), but on the contrary, he should show no curiosity in knowing about such visions, nor should he interrogate the soul minutely about them: nor should he anticipate by saying: "Was it not so? Did you see this, or that?" because then the soul will easily answer affirmatively, either out of malice or simplicity. If he clearly knows that such visions are the work of the imagination, or are diabolical, because they

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perhaps lead the soul away from obedience, humility, or some other virtue, then he should plainly tell it this. But if the confessor does not discern this, it is not always advisable to assert with certainty that those visions are either diabolical or imaginations, as some who are too incredulous do (in contrast to others who are too credulous and believe everything to be true); but he should tell the penitent to pray to God that he may not be further led along such dangerous paths, protesting that, as long as he lives on earth, he wishes to know God only through the way of faith. Furthermore, he should suggest that, from the visions he has had, whether false or true, he may perceive the fruit that is more necessary, and especially that of behaving properly with God; for by acting in this way, even if the visions were from a demon, the demon will remain defeated.

441. As for speech, speech can be successive, formal, and substantial. It is successive when the soul, meditating on some truth of faith, feels as if it is being answered by its own spirit, but as if by a foreign person. This, when good, produces...

[*Latin ed. p. 588*]

The effect, whether of extraordinary love or humility, can be a special light from God; but when it is not accompanied by an increase in customary love, it is a sign that it originates from the soul's own understanding. It is formal when the soul hears certain words, but these words are external to itself; and this can be perceived either by the ears, or by the imagination, or by the intellect. To determine whether it is divine or diabolical, one must consider the things that are expressed, or the actions that are commanded; and the effects that are left behind. Primarily, if it is divine, and it commands works of patience, self-denial, or any other spiritual work, it will leave a certain ease in enduring all things, in working, and in humbling oneself. It is substantial when it is the same as the formal, and differs only in its effect; for the formal either instructs or commands; but the substantial immediately produces what it expresses; for example, if it says: "Be consoled; do not fear; love me," the soul at that very moment will be filled with consolation, free from fear, or inflamed with love. This kind of communication is the most reliable; the first is very uncertain; the second, that is, the formal, is very suspect, especially when it commands actions to be performed; therefore, if the director observes that the things commanded are contrary to Christian prudence, he should entirely forbid them; if, however, they are not contrary to prudence, it is advisable to suspend their execution until there is greater certainty, and even more so if the things are extraordinary.

442. Finally, with regard to revelations of hidden or future things, such as the mystery of faith, the state of souls, predestination, death, promotion to some dignity, and the like; these can be received in three ways, namely, through visions, through words, and through the understanding of naked

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truths. In such revelations, the director must exercise great prudence, and should not be too quick to believe, and especially to act, when it is a question of assuring someone based on knowledge received in a revelation. Above all, he should order the soul not to reveal the revelation to others, and he himself should always proceed with the utmost caution, even seeking the counsel of wiser individuals, for such revelations are usually doubtful and suspect. Less suspect are the understandings of simple truths concerning mysteries, divine attributes, the malice of sin, the unhappiness of the damned, and the like; these, when they are in conformity with faith, as St. John of the Cross says (Spiritual Ascent, Book 4, chapter 33), are not to be sought by the soul; but if they are granted, they should be received humbly, and not rejected.

443. This raises the question: Whether all these kinds of graces and supernatural communications should be rejected or accepted. And, as a learned author says (St. Bernard, *De Cattolvetere*, Directives for Missionaries, Book 2, page 2, paragraph 4), along with St. John of the Cross, and others, those graces which lead away from faith, because they consist of certain distinct elements, such as visions, words, and revelations, are...

[*Latin ed. p. 589*]

It is necessary for every soul to reject all things with effort; but those things, on the contrary, which are of the faith, such as confused, general, and divine feelings, which unite the soul to God, are not to be rejected, but rather may be humbly sought and desired, so that the soul may be more and more united to God, and strengthened in His holy love. This, however, is understood concerning those souls who are already granted similar favors, for for others, the safer course is to desire and seek only the active union, which, as we have said, is the union of our will with the divine will. Therefore, when the director encounters a soul with these communications of contemplation, or of darkness, or of union, he should not order her to reject them, but rather to receive them humbly, and with thanksgiving. He should always use words that do not make the soul entirely secure, but leave some fear, which, although it does not disturb her, will nevertheless keep her in humility, and prevent her from all presumption. However, the confessor should strictly forbid the soul to recount certain distinct experiences which she has received through visions, and similar things, as we have said above, always, however, in a spirit of humility (and without any contempt, such as scoffing or derision, which is not permitted, as many assert); and she should protest before God that she wishes to serve Him in pure faith. Furthermore, St. Theresa says (Life, chap. 45, and Mansions, VI, chap. 9), that whenever a soul feels herself strongly inflamed with love for God, she should consider this a divine communication, not in order to believe that she is better than others, but in order to prepare her soul

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to walk more perfectly before God; for by acting in this way, God will ensure that the demon, even if he has some influence, will be defeated, and will harm himself with his own weapons. 144. But let us conclude. The director, therefore, 4. should urge the soul, as we have said above, to faithfully recount all the communications she has in prayer, but without showing any eagerness to know them; nor should she ever reveal to others the supernatural graces that have been granted to her penitent; for it will happen that they will rely on her prayers, and expose her to great danger of pride; or, if after such knowledge, they notice even the slightest fault, they will be greatly scandalized, and will hold her in contempt. 2. He should not show this soul, distinguished by such favors, any particular sign of esteem, and much less should he send other penitents to seek advice from her, or to ask for consolation, or direction; rather, he should make her appear less important than other souls who walk the path of faith, for souls who are adorned with these favors, speaking regularly, are always and greatly in need of humility. 3. If the director notices that the soul is preserving humility and fear in these divine communications, he should help her, and even reassure her, whenever he knows it is appropriate. St. Theresa says that a soul will never be moved to do great things for God, unless she recognizes that she has received much from God. Indeed.

[*Latin ed. p. 590*]

The same Saint, when she was made more secure by the Most Holy Fathers Francis Borgia and Peter of Alcantara, from that time onward, having received the gifts that she had received, and knowing them to be truly divine, did not strive further for perfection, but rather progressed. And neither should the director judge all such communications as lies and illusions, even if he observes the soul repeatedly falling into some defect (for defects are not always fully considered, or committed with adherence and contempt). The Lord grants such graces not only to perfect souls, but sometimes even to imperfect ones, and that, namely, in order to deliver them from their imperfections and to raise them up to a more perfect life. Therefore, when it is recognized that through such communications the soul is increasingly freed from passions, and progresses in divine love, and in the desire for perfection, it is a sign that these communications are good. Furthermore, when it is a question of external graces, such as visions, locutions, and revelations, as we have said, it is generally safer for the director to show that he does not place much importance on them, saying what Saint Teresa said from Heaven to a certain religious person after her death: "Let souls not trust in visions and particular revelations, nor place perfection in having them; for although some of them are true, yet more are false and deceitful; and it is difficult to find one truth among many lies (for there are more false visions than true ones), and the more eagerly they are sought and valued, the more the person will stray from

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faith and humility, which is the safer path that God has set." Therefore, let him advise her to pray to God that He may grant her a true ecstasy, that is, a complete detachment from earthly things and from herself, without which she will never be able to attain perfection. But if the director ever observes that the soul is not well-grounded in the knowledge of its own misery, and wishes to be certain that its communications are divine; and is troubled to hear that the director does not wish to believe them to be such, this is a very bad sign: it is a sign that these communications are from the devil, based on the effects that are observed, namely, adherence to pride; or it is an indication that the soul is not walking well, because it should at least doubt, whenever the confessor doubts, and therefore in this case, she must be humbled in every way, and strive as much as possible to avoid sin; and then, if even then she does not acquiesce, let her be deprived of Communion, and let her be more severely mortified, because then she is in great danger of being deceived by the devil. Finally, even if the director were to indicate to the soul that its communications are from God, he should still urge her to always keep before her eyes (or at least in the beginning) some point of the life or passion of Jesus Christ. Saint Teresa said that a soul that loses the guidance of the good Jesus will never attain perfect union with God. Souls who are beginning to meditate on the Lord's passion do so in the manner of discourse; contemplative souls, however, do not use discourse, but, having set before themselves some mystery, they admire the goodness, mercy,

[*Latin ed. p. 591*]

The divine love, and from this, God causes them to pass, when it pleases Him, to the contemplation of His divinity. § III. On mortification. 445. Regarding mortification, it must be noted that when souls begin spiritual life, it often happens, as we have said, that the Lord draws them with sensible consolations, and at first, they are eager to mortify themselves with disciplines, cilices, fasts, and similar afflictive exercises. Meanwhile, the director must be very cautious in granting such mortifications, for otherwise, when the time of aridity arrives, as it usually does, the soul, deprived of its former sensible fervor, easily abandons all its mortifications, and beginning to doubt, it may even abandon prayer and spiritual life itself, considering them less suitable to it, and consequently, loses everything. Sometimes it also happens that these souls, due to the initial fervor, give themselves to immoderate things, and fall into bodily illnesses, and then, to recover, they abandon all spiritual exercises, which is a great danger of not resuming them again. Therefore, the director must take care that they are first strengthened in spiritual life, and then, considering the circumstances of health, occupations, and fervor, he may grant them those external mortifications that he judges most suitable for them, according to Christian prudence. I say according to Christian prudence, because there are some directors who are so imprudent that they seem to place all the progress of

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a soul in trying to mortify it with fasts, cilices, bloody disciplines, burnings, and the like. Others, on the other hand, seem to reject all external mortifications as useless for spiritual progress, placing all perfection in interior mortification. But these also are mistaken, like the first, because bodily mortifications help the interior ones, and are, in a certain way, necessary (when they can be practiced) to train the senses, and therefore, we read that they were frequently practiced by all the saints to a greater or lesser extent. Indeed, it is true that interior mortification of passions is most required of those who are penitent; for example, not answering injuries, not seeking, nor manifesting to others things that tend to one's own estimation, yielding in contentions, condescending to the will of others (but without spiritual harm); therefore, it is sometimes advisable to forbid a soul all external mortifications, until it feels free from some dominant passion, such as vanity, resentment, greed for the things of this world, self-esteem, or one's own will. But to absolutely assert that external mortifications are of no use, or of little use, is the greatest error. St. John of the Cross said that he who rejects penances should not be given any credit, even if he performed miracles.

[*Latin ed. p. 592*]

446. Therefore, from the very beginning, the director should above all instruct the penitent to do nothing that is contrary to his guidance, or without his obedience. Those who act against obedience in their penances, says Saint John of the Cross, "progress more in vices than in virtues." Furthermore, as I have said, the director should be very cautious in granting such mortifications, even if the penitents insist upon them; it will be sufficient to grant them some slight, but rare, mortification, such as the wearing of a discipline, an iron chain, or abstinence, rather to inspire in their minds a desire for mortification, than to mortify them as is fitting; and later, with the passage of time, he will be able to act more liberally, according to the progress that the soul makes in virtues; for when that soul is firmly established in the spirit, he will not be able to deny it suitable mortifications without scruple. Moreover, generally speaking, he should propose this rule to himself, namely, never to grant external mortifications unless they are requested, because these are of little benefit if they are received without a great desire: and whenever he grants them, he should always grant less than is requested, and rather, as Cassian says, should exceed in denying than in granting. Above all, he should encourage external mortification concerning food, because some spiritual souls are not very fond of this: this is truly the most difficult, but most beneficial, mortification for the soul, and often even for the body. Saint Philip Neri said: "He who does not restrain his appetite will never attain perfection." On the contrary, he should be sparing in granting mortifications of sleep, because these can easily be harmful to both the body and the soul; for if sufficient sleep is taken away, the head suffers, and with a languid head, the person remains incapable

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of meditating, and of other exercises of devotion. Whatever mortification he grants to the penitent, he should persuade him that this is absolutely nothing in comparison to what the Saints have done, and in comparison to the punishments which Jesus Christ endured for us. Saint Teresa said: "Everything is impurity compared to one drop of the blood that the Lord shed for us." Better, more useful, and less dangerous mortifications are those that are negative, and for which, generally speaking, the director's obedience is not necessary, such as depriving oneself of the sight or hearing of curious things; speaking sparingly; being content with foods that are less palatable, or poorly prepared; not approaching the fire in winter; choosing less valuable things for oneself; rejoicing and being glad when some necessary things are lacking; for in this consists the virtue of poverty, as Saint Bernard said: "The virtue of poverty is not poverty itself, but the love of poverty." Furthermore, one should not complain about the inconveniences of the times; about contempt for oneself; about persecutions, and the annoyances of bodily infirmities. These are the stones that polish the diamond in the heavenly Jerusalem. Saint Teresa said: "I believe that God allows us to experience these things in order that we may be his friends."

[*Latin ed. p. 593*]

It is also folly to seek the favor of the world. Souls that truly love God do not seek rest. 147. Here arises a doubt: The Gospel says in one place: "So let your light shine before men, that they may see your good works, and glorify your Father who is in heaven." Matthew 5:16. In another place, it says: "But when thou dost alms, let not thy left hand know what thy right hand doth." Matthew 6:3. Therefore, the question arises: Are acts of virtue to be made manifest to others, or are they to be concealed? And the answer is given by distinguishing: Actions common to the practice of Christian virtue ought to be performed openly; such as the frequent celebration of the Sacraments, mental prayer, the visitation of the sick, attending Mass with reverence, and with interior recollection; maintaining a modest gaze, observing silence in church; saying: "I want to become holy"; avoiding idle talk, dangerous conversations, and curiosities, and the like. But those actions which are considered extraordinary acts of devotion, and which seem to possess a certain singularity, as those mentioned above, such as external penances, the use of scourges, prayer with arms outstretched in the form of a cross, eating bitter herbs, fasting, and weeping during prayer, etc., ought to be concealed as much as possible. As for the remaining acts of virtue, such as ministering to the sick, giving alms to the poor, humbling oneself when being wronged, and the like, it is better to conceal them as much as possible; but if, perhaps, they cannot be performed except publicly, they should not be omitted, provided that they are done solely with the intention of pleasing God. § IV. On the Frequency of the Sacraments. 148. Now, something must be said about the way in which a confessor

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should guide spiritual souls regarding the frequency of the Sacraments, namely, Confession and Holy Communion. With regard to Confession, it is advisable to generally encourage those who have not yet confessed their sins to do so; for if they have already confessed, or if a soul is troubled by scruples, it is absolutely necessary to forbid this Confession; as for the ordinary Confession, some delicate souls are accustomed to confess daily; but, generally speaking, it is sufficient for spiritual persons, especially those prone to scruples, to confess once, or at most twice, a week. But when any of these are burdened by a slight fault, and do not have the opportunity to confess, Father Barisonius, in his treatise on Holy Communion, citing the authority of St. Ambrose, and of many other authors (and also suggesting this in a certain letter), says that they should not, for this reason, omit Holy Communion; for the Sacred Council of Trent teaches that there are also other means for the remission of venial sins, such as acts of contrition and love; therefore, it is better to use these to purify the soul from that fault.

[*Latin ed. p. 594*]

In some cases, it may be more beneficial for certain souls who are timid to prepare themselves for Communion through their actions than through Confession itself. And it often happens that, at such times, the soul prepares itself with greater devotion, contrition, faith, and humility.

449. Regarding Communion, we are not speaking here of the obligation of pastors of souls not to deny Communion to any subject who is not publicly a sinner, and whenever he reasonably requests it. We have said enough about this in the Book (Lib. 6, n. 254), where we saw that Innocent XI, in a certain Decree, ordered that the practice of frequent Communion be left to the prudence of confessors; therefore, I do not know how pastors can, with a safe conscience, deny Communion to those who request it, without an evident reason. And it should be noted that in the aforementioned Decree, Bishops are prohibited from prescribing to their subjects the days on which they should receive Communion; but we are speaking here only of the manner in which confessors should behave in granting Communion to their penitents. Some err through excessive leniency, others through excessive rigor. There is no doubt that it is an error, as noted by the Most Holy Pope Benedict XIV in his golden book on the Synod, to grant frequent Communion to those who often fall into grave sins, and who are not concerned about doing penance and about their amendment; or to those who approach Communion with a desire for venial sins, without any desire to free themselves from them (Lib. 6, n. 270). It is indeed sometimes advisable to grant Communion to those who are in danger of falling into mortal sins, so that they may receive strength to resist; but with respect to those persons who are not in such danger, and who, on the contrary, habitually commit deliberate venial sins, and in whom there is no amendment, nor any desire for amendment, it will be best not to allow

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them Communion more than once a week, and indeed it may sometimes be beneficial to deny them Communion for the entire week, so that they may experience greater remorse for their defects, and greater reverence for this Sacrament (C. Peracta 40. Dict. 2. de consecration.). This is especially true, because the more common opinion holds that to receive the Eucharist with a light, actual sin, or with a desire for it, is a new fault, due to the irreverence that is shown to the Sacrament.

Some claim that the Decree of St. Anacletus (Catech. Rom. de Sacram. Eucharist. p. 2, n. 61) states: "After the consecration, let all communicate who do not wish to remain outside the doors of the church; for so the Apostles decreed, and so the Church of Rome holds." But first, it is doubted by Suarez and others whether there ever was such an Apostolic precept. Secondly, as the Glossary there testifies, and the Roman Catechism (Ibid. n. 60), this Decree did not obligate all the faithful, but only those who...

[*Latin ed. p. 595*]

Our assistants attend the altar. And finally, since that decree obligates all, it is certain that today it has fallen into disuse. 450. On the contrary, some directors are certainly mistaken, and they greatly deviate from the spirit of the Church, when, without any regard for the needs or progress of souls, they indiscriminately deny frequent Communion, not for any other reason than because it is frequent. The Roman Catechism (Ibid.) explains the desire of the Council of Trent, that all present at the sacrifice of the Mass should communicate, and teaches that it is the duty of the parish priest diligently to urge the faithful to Communion, not only frequent, but even daily, with the obligation of instructing them that, just as the body needs daily food, so too does the soul. I omit here the citations of the authorities of the saints and masters, which are entirely in conformity with this, because they are found noted in so many books that treat of frequent Communion. It is sufficient to know from the Roman Catechism in the place cited above, and from the Decree of Innocent XI, mentioned in our book (Lib. 6, n. 254), that the frequent use of Communion, indeed daily Communion, has always been approved by the Church and by all the Fathers, who, as a learned author demonstrates, whenever they noticed the practice of daily Communion to be cooling, they used all diligence to restore it. And in the Third Synod of Milan, held under St. Charles Borromeo, it was ordered that the parish priests should exhort the faithful in their sermons to this frequency of Communion; and furthermore, it was imposed upon the bishops of the province to forbid those who preached against it, and to severely punish those who disseminated such things, as sowers of scandal, and contrary to the sentiment of the whole Church. Moreover, in the aforementioned Decree of Innocent, it is imposed upon the bishops to take the utmost care that Communion, even daily Communion, is not denied to anyone, and to strive, as is fitting, to foster this devotion in their subjects. Some more

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rigid spirits readily admit that daily Communion is permissible, but they say that a proper disposition is required for it; but we desire to know from them what they understand by the term "proper disposition"? If they mean "worthy," then who ever should approach the Eucharist more worthily? Only Jesus Christ worthily received the Eucharist, because only God could worthily receive God. But if they mean "suitable disposition," then it has already been said that it is fitting to deny frequent Communion to those who have actual venial sins, or a disposition to them, without a desire for amendment. But if we speak later of those who, having already removed the disposition even for venial sins, and having overcome the greater part of their inclinations to vice, have a great desire to communicate, St. Francis de Sales says (Introduction to the Devout Life, ch. 20) that these can rightly communicate daily, with the prior advice of their director. And St. Thomas (4 Sent. Dist. 12) teaches that when a soul experiences the benefit of Communion in growing in divine love,

[*Latin ed. p. 596*]

One must not diminish reverence for the Sacrament; one should not abstain from Holy Communion, even daily; indeed, the words of the Saintly Doctor: "If anyone should have experienced that devotion to the Sacrament increases love and does not diminish reverence, such a person should receive Holy Communion daily." 454. And although abstaining from Communion on any given day is also a virtue, it is the common opinion of the Doctors, as Father Granata states in his treatise on Communion, that it is better to approach Communion daily out of love, than to abstain out of reverence. And Saint Thomas confirms this (p. 3, question 80, article 10, ad 3), saying: "And therefore, both pertain to the reverence of this Sacrament, both that it be taken daily, and that it be sometimes abstained from..." However, love and hope, to which Scripture always calls us, are preferred to fear. Indeed, Father Barisonius rightly says that he who approaches the Eucharist with the desire of growing in divine love, also performs an act of reverence towards Jesus Christ; indeed, he performs a positive act, while he who abstains performs only a negative one. Many saints, who had great reverence for this Sacrament, did not abstain from daily Communion: such as Saint Gertrude, Saint Catherine of Siena, Saint Therese, Blessed Joan of Chantal, and others. And to those who assert that such Saints no longer exist, Father Barisonius rightly replies that it is a rash presumption to suppose that the hand of God is now shortened. Very Reverend Father Avila does not hesitate to say that those who condemn those who frequently approach the Eucharist are performing the work of the devil. 452. Furthermore, considering the doctrines mentioned, it seems that a director cannot, without scruple, deny frequent, and even daily, Communion (except, speaking ordinarily, one day in each week, as some prudent directors do, and except for that time when penitents may wish to be deprived of Communion, to prove

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their obedience, or humility, or for some other just reason) to certain souls who desire it, in order to make progress in divine love; always, however, provided that they are not alienated from the affection of any venial sin, and that they are further devoted to much mental prayer, and strive to tend towards perfection; and that they do not fall into sin, even venial sins, fully and voluntarily. For, as Saint Prosper says, this is perfection, which can be attained in this life, given human frailty. And when a confessor knows that it is useful to grant frequent Communion to such persons, Innocent XI states in his Decree, that nothing prevents it, even if they are merchants or married people. Indeed, his words: "Frequent access to the Eucharist is to be permitted by the judgment of confessors, who, considering the purity of conscience, the fruit of frequency, and the progress in piety of laymen, merchants, and married people, and knowing that it will be profitable for their salvation, must prescribe it to them."

[*Latin ed. p. 597*]

453. And although some soul might occasionally fall into a venial sin, voluntarily, due to mere weakness, but afterward quickly repents and proposes amendment; if then it desires to receive Communion to gain strength from the Sacrament, lest it yield, and to progress on the path of perfection, why should it be denied Communion? The proposition 22 of Baji, condemned by Alexander VIII, stated: "Those who claim the right to receive Communion before having made amends for their sins are to be judged sacrilegious." And proposition 23: "Likewise, those in whom the purest love of God is not yet present, and who are free from all mixture, are to be kept away from the Holy Communion." The Holy Council of Trent called this Sacrament: "The antidote by which we are freed from daily sins, and by which we are preserved from mortal sins." Indeed, for the purpose of preserving the soul from relapses, the Apostles granted daily Communion to the early Christians, among whom, without doubt, there were also imperfect individuals, and perhaps even more imperfect ones, as is argued from the Epistles of St. Paul and St. James. The Holy Church (in the post-Communion prayer for the 23rd Sunday after Pentecost) prays that whatever is vicious in our mind may be healed by the medicine of this Sacrament. Therefore, Communion was instituted even for the imperfect, so that through this food they may be healed. It should also be noted what St. Francis de Sales says in his Philothea (Devout Life, chapter 21) on this matter: "If they ask you why you communicate so frequently, answer them that two kinds of people should communicate more often: the perfect, in order to maintain their perfection; and the imperfect, in order to be able to attain perfection. The strong, lest they become weak; the weak, that they may become strong; the infirm, that they may be healed; the healthy, lest they become infirm." And as for you, who are imperfect, infirm, and weak, you need frequent Communion. Tell them that those who are not involved

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in worldly affairs should communicate more often, because they have the opportunity; while those who are engaged in such affairs need Communion. Finally, St. Francis concludes, saying: "Come more often, O Philothea, to the Eucharist, indeed as often as possible, with the advice of your director, and believe me, that the rabbits in our mountains become white not for any other reason, than because they eat only snow: and you, by eating purity in this Sacrament, will become entirely pure." Also, Father Granata, in his treatise on Communion, says: "A man should not abstain from this Sacrament because of his own unworthiness; for this treasure has been reserved for the poor, and this medicine for the sick: therefore, no one (he adds) who knows himself to be imperfect, should keep himself far from this remedy, if he truly desires to be healed. Indeed, the same author says that the more one knows himself to be weak, the more he should approach this food of the strong: which is entirely in accordance with what St. Ambrose says (Book 4, on the Sacraments, chapter 6): 'He who always sins, should always...' "

[*Latin ed. p. 598*]

To have medicine: and St. Augustine (Book 5, On the Sacraments, chapter 4): "You sin daily, take it daily." 154. Add that St. Thomas teaches (Summa Theologica, 3rd part, question 79, article 8), that the effect of the sacrament, as far as the increase of grace is concerned, is not hindered by venial sins, provided that they are not committed at the very time of Communion; and although these [sins] hinder in part, they do not entirely prevent the effect of the sacrament. This opinion is commonly held by Soto, Suarez, Valentia, Vasquez, Coninkius, and many others, as found among the theologians of Salamanca (Book 6, number 270, see Question II). Furthermore, several more important authors (Ibid., number 269, see Effect II) hold that this sacrament remits venial sins, concerning which the soul does not presently have actual contrition; and this is in accordance with what the Roman Catechism says (On the Eucharist, page 2, number 52): "It is not to be doubted that the Eucharist remits, and forgives, lesser sins, which are commonly called venial sins; for whatever the soul may have omitted through the ardor of desire, the Eucharist restores it, removing these lesser faults." At the very least, as Angelicus says (D. Th., 3rd part, question 79, article 4), the act of charity is aroused through Communion, by which sins are forgiven: "This [act of charity] is aroused in this sacrament, by which venial sins are absolved." 155. If, however, it is later discovered that, despite frequent Communion, the soul makes no progress on the path to perfection, and does not amend itself from deliberate sins, even if they are venial, such as clinging to sensual pleasures in seeing, hearing, eating, or dressing with vanity, then the use of Communion should certainly be restricted, even so that the person may begin to seriously consider their own amendment, and strive for

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their spiritual perfection. Furthermore, it should be noted that, although, according to St. Thomas (Ibid., question 80, article 40), it is required that one approach Communion with great devotion, it is not necessary that this devotion be the highest, or openly sensible. The director should discern in the depths of the penitent's will a certain eagerness to do whatever pleases God. The learned Gerson says that he who abstains from Communion because he does not feel within himself a great fervor, is like one who, feeling too cold, would not approach the fire, because he experiences no warmth. Therefore, Father Granata, along with Cajetan, teaches that those who are timid, and who, out of an immoderate fear of their own unworthiness, omit Communion, greatly harm their own progress. St. Lawrence Justinian says that it is not necessary for the soul to feel, or openly discern, an increase of fervor in order to pursue Communions, because this sacrament often works, without us even noticing it. St. Bonaventure says (On the Progress of Religious, chapter 78): "Even if tepid, yet confidently, relying on the mercy of God, approach with trust, for he who considers himself unworthy, should remember that he needs this sacrament all the more, inasmuch as he feels..."

[*Latin ed. p. 599*]

He says he is sick: and therefore, you do not seek to join yourself to Christ, so that you might sanctify Him, but so that you might be sanctified by Him. And afterwards, he adds: Nor should the Holy Communion be omitted, even if a man does not feel a special devotion, when he strives to prepare himself for it, or if, either during its reception, or afterwards, he feels himself less devout than he would wish. Therefore, the Saint rightly says that, even if the soul were to experience less devotion after receiving the Eucharist than before, it should not, for that reason, omit it. Therefore, just as it is advisable for the soul, when it feels itself most inclined to Communion, to restrain itself from it, postponing it (especially if it is noticed that this restraint causes disturbance; for such distress is a sign of pride, which truly makes one unworthy), so, conversely, when it feels ardor and eagerness to receive the Eucharist, it is advisable to urge it more frequently to Communion, so that it may draw strength from the Sacrament. Oh, if only! I conclude: oh, if only more souls were to be found in the world of this kind (which some, with undue rigidity, call irreverent and rash), who, hating even minor faults, would desire to communicate, not only frequently, but even daily, with a true desire to amend themselves and to progress in divine love; for if this were the case, Jesus Christ would be loved far more in the world. Experience demonstrates to all those who exercise the ministry of guiding souls, as I myself have experienced, that those who approach Communion with a sincere desire greatly profit; and the Lord draws them to His love in a wonderful way, although He often does not manifest this to them for their greater good; indeed, He often leaves them in darkness,

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and desolation, and without any perceptible devotion. For these souls (as St. Teresa and St. Henry of Suso teach), there is no more effective remedy than frequent Communion. Therefore, to conclude, let the confessor urge Communion whenever a true desire is demonstrated, and whenever he observes that the soul is progressing spiritually through the benefit of Communion. Let him also encourage them to spend time in thanksgiving after Communion, for as long as they are able. Very few directors diligently do this; that is, they do not impress upon their penitents to give thanks for a considerable time after receiving the Eucharist, and the reason is, because very few priests remain with Jesus Christ in thanksgiving after the sacrifice of the Mass; and therefore, they are ashamed to urge others to do what they themselves do not do. Thanksgiving should ordinarily last for a full hour; at least it should last for half an hour, in which the soul exercises itself in loving and praying. St. Teresa says that after Communion, Jesus is present in the soul as on a throne of mercy, so that thanks may be given to Him, saying: "What do you wish, that I should do for you?" And elsewhere: "After Communion, let us not lose..."

[*Latin ed. p. 600*]

A clear opportunity for making progress. Divine Majesty does not usually fail to reward hospitality, if it is received well in the soul. He should also encourage frequent spiritual communion, which is recommended by the Council of Trent. "Spiritual communion," says St. Teresa, "is very useful." Do not neglect this: here the Lord will experience how much you love Him. § V. Method of life for a religious, which should be directed towards the path of perfection.

456. Before all else, it must be understood that the following should be observed, unless some impediment of health, duty, or obedience prevents the penitent: and it must also be understood that, with the permission of the spiritual father, he is also the superior of the monastery, concerning external mortifications which are exposed to the eyes of others.

457. And first, concerning prayer:

4. He should dedicate at least three hours to mental prayer, one in the morning, one in the evening, and one after Communion.

5. He should visit the Blessed Sacrament and the Blessed Virgin Mary for half an hour, or at least a quarter of an hour. In these prayers, he should renew his vows several times a day, if he has already made his profession, or those to which he is perhaps frequently bound.

6. He should recite the Rosary, at least five decades, with other vocal prayers; but these are not more important, because when there are many, they are recited with little fruit, they weigh down the head, and thus hinder mental prayer.

7. He should make very frequent use of ejaculatory prayers, such as: "My

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God, and how good you are, my God!" "I love you, Jesus, my love, I adore you, Lord, why are you not loved by all?" "Oh, that I had never offended you!" "I want, Lord, whatever you will." "When will I see you, and love you face to face!" "Behold me, do with me whatever you will." The director should strongly encourage such prayers of love, and the soul should make them with great devotion.

8. He should add to prayer, reading for spiritual edification for half an hour, reading the works of Rodriguez, or Santejores, or "Monita ad religiosos," or another book that deals with virtues, or reading the lives of the Saints, the reading of which is perhaps more useful than all the others.

458. Secondly, he should approach Holy Communion daily, except for one day in each week. But during novenas to the Holy Spirit, to the Nativity of the Lord, to the most Blessed Mary, and to the patron saints, he should receive Communion daily, and he should make spiritual communion daily, at least three times.

459. Thirdly, concerning mortifications:

4. He should daily use the flagellum without drawing blood for about a quarter of an hour, and with blood twice, or at least once a month.

5. He should wear an iron chain from morning until after lunch; after lunch, however, he should wear a small chain on his arm. Never...

[*Latin ed. p. 601*]

Men should wear a chain around their waist, and not a *cilicia* made of horsehair, because such garments are very harmful to health. 3. Fasting on bread and water should be observed on the Sabbath, and on the seven feasts of Mary, if one's health permits, or at least by consuming only one meal. At the evening meal, one should ordinarily not exceed eight ounces of food, unless there is some extraordinary necessity; one should abstain from fruits on Wednesdays and Fridays, and during the novenas mentioned above, in which one may also abstain from some other portion of the usual food; and when eating, one should mix in a small amount of bitter herbs, but never ashes. Nothing should be eaten outside of mealtimes, for it is better, comparatively speaking, to practice this moderation daily, than to fast twice or three times a week. Sleep should not extend beyond six hours; always, truly, to five hours; for exceeding this amount deprives the head of sleep, and hinders other spiritual exercises. 4. One should observe silence for three hours of the day, which is to be understood as refraining from unnecessary words. The following are general guidelines for perfection. 460. I. Place all one's trust in God, and completely distrust oneself, and one's own good intentions. A firm determination to overcome oneself, and to resist temptation in all circumstances. St. Theresa says: If the fault does not proceed from us, let us not fear that God will withhold from us the help necessary for our sanctification. 464. II. Be careful to avoid any deliberate

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fault, or any fault knowingly committed. May God deliver you from deliberate sin, (says the same St. Theresa), however small it may be. She adds: For the demon, through the means of the smallest things, makes certain breaches, through which great evils enter. 462. III. Do not be saddened after committing faults, but quickly humble oneself, and flee to God with a brief act of contrition, and with the resolution to be reconciled with Him; and thus one should always act, even if one were to fall a hundred times a day. And on this point, St. Theresa warns that one's own temptations should not be shared with imperfect souls, because in this way, harm is done to both oneself and others. 463. IV. Detach oneself from all relatives, possessions, and pleasures; otherwise, says St. Theresa, the soul, not detaching itself from worldly pleasures, will not, after a long time, detach itself from the path of God. Avoid familiarity with people of diverse character, however religious they may be; for often the devil introduces with them certain impure affections, hindering spiritual progress. See note no. 449. Above all, one must renounce one's own estimation, and one's own will, indeed, even spiritual things, such as prayer, Communion, and mortifications, when obedience does not permit it. In one word.

[*Latin ed. p. 602*]

It is necessary to banish from the heart everything that is not God, and that which is not pleasing to God according to His highest will. 464. V. To rejoice in spirit whenever one is considered contemptible, ridiculed, and the most worthless of all. Oh, how beautifully that soul prays which willingly embraces contempt! Especially in communities where this virtue is most necessary; consequently, it is necessary to cultivate a special affection for our enemies and persecutors, serving them, doing them good, honoring them, at least blessing them, and commending them especially to God, as the Saints were accustomed to do. 465. VI. To foster a burning desire to love God and to please Him. St. Teresa says: The Lord is so delighted by desires, as if they were about to be carried out. Without this desire, the soul will not progress on the path to perfection, nor will God bestow upon it very special graces. The same Saint says: Ordinarily, God does not grant very special favors, except to those who have desired His love. This desire must always be joined with the determination to do all that we can to please God. The aforementioned Saint says: The devil fears generous hearts most of all. And elsewhere: The Lord demands nothing from us except a firm determination, so that He Himself may perfect the rest. It is also necessary to cultivate a supreme affection for prayer, which is the furnace in which divine love is kindled. All the Saints, because they loved God alone, also loved prayer alone. It is also necessary to ardently desire paradise; for in heaven, souls love God with all their powers, which no one can achieve on earth, and therefore, God desires that we desire this kingdom most ardently, which Jesus Christ acquired for us with His blood.

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466. VII. To have great conformity to the divine will in all things, contrary to one's own appetites, and to offer oneself to God many times a day. St. Teresa used to do this fifty times a day: "Progress," says the Saint, "does not consist in seeking a greater enjoyment of God, but in fulfilling His will." And elsewhere: True union consists in uniting our will with the divine will.
467. VIII. To render exact obedience to the rules, to superiors, and to one's spiritual director. The Venerable Father Vincent Caraffa said: "Obedience is the queen of all virtues; for all virtues obey obedience." And St. Teresa said: "God demands nothing from a soul that has proposed to love Him, except obedience." True obedience consists in obeying promptly, faithfully, cheerfully, and without any judgment, seeking no reason, whenever something is commanded that is certainly not a sin, as the Saints Bernard, Francis de Sales, Ignatius of Loyola, and all the masters of the spiritual life say; and in doubtful matters, to choose that which one presumes would have been commanded by obedience; and when this presumption is not...

[*Latin ed. p. 603*]

It is possible to choose that which is most contrary to our inclinations. This is that which St. Francis Xavier and St. Ignatius so often impressed upon you, who was accustomed to say that the soul profits far more from mortification, even for a single quarter of an hour, than from other mortifications for many hours.

168. IX. Always attend to the divine presence. St. Theresa says: All evil comes from the fact that we do not consider God to be present. He who truly loves never forgets the object of his love. To preserve the true memory of this divine presence, it helps to wear some special sign, or to have something within the room. Above all, this presence should be fostered frequently during the day by repeating acts of love towards God, and by asking for divine love.

E.C. My God, and all. I love you with all my heart. I give myself entirely to you. Do with me what you will. I desire nothing but you, and your will. Give me your love, and I am sufficiently rich, etc.

It must be noted, however, that these acts should be performed without any force, and without desiring any sensible consolation; but with a certain sweetness and pure will to please God alone. St. Theresa asserted: Let us not fear being abandoned by God, even after a single glance towards his remembrance.

169. X. Direct the intention of pleasing God in every daily action, whether spiritual or corporal, by saying: Lord, I do this only to please you. A right intention is called the alchemy of the spiritual life, which turns all actions, even the most lowly, into gold.

170. XI. Each year, perform spiritual exercises for eight or ten days, withdrawing oneself, as much as possible, from all conversation and from any

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work that brings distractions, so that one may converse with God. Similarly, dedicate some day each month to oneself. Devoutly celebrate novenas for the Nativity of the Lord, the Holy Spirit, the seven feasts of Mary, St. Joseph, one's guardian angel, and one's patron saint. During these novenas, one can daily approach Communion by praying for an hour, or at least half an hour longer than usual. Recite some other vocal prayers, but not many; for it will be far better to practice a certain number of acts of love, or similar things.

174. XII. Have a special devotion to St. Joseph, one's guardian angel, one's patron saint, and especially to St. Michael, the universal protector of all the faithful; but above all, to the most blessed Virgin Mary, who is called by our Church the life and our hope; for it is morally impossible for a soul to make much progress in perfection without a particular and tender devotion to the most holy Mother of God.

[*Latin ed. p. 604*]

CHAPTER X. Concerning certain warnings of greater importance to confessors and pastors: with the practice of teaching mental prayer. §. I. Warnings for confessors.

472. Of those things which we have said above, the following are particularly noteworthy, and which a confessor ought to consider in exercising his office.

473. I. Above all, he must, on the one hand, exercise the utmost charity in receiving sinners, and encourage them to trust in divine mercy; on the other hand, he must not, for the sake of human respect, fail to admonish them firmly, and also show them the unhappy state in which they find themselves, and assign suitable means for freeing themselves from the evil habits they have already contracted; and especially, he must be unyielding in delaying absolution whenever it is necessary.

474. II. He should, as much as possible, question the uneducated to ascertain whether they know the principal mysteries of the faith. See what we have said on this matter, n. 22.

475. III. He should not fail to question such uneducated persons, or others of negligent conscience, concerning those things in which they are most likely to fall; whenever they do not confess these things spontaneously.

476. IV. He must be very careful in his questioning about matters of a shameful nature, especially with girls and boys, lest they learn what they do not know. And if he himself suffers temptations in such matters, he should often raise his mind to God, turning to some sacred image; and before beginning to hear confessions, he should always renew the rectitude of his intention.

477. V. He should question fathers and mothers of families not only in general about the education of their children, but also in particular, and he

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should especially inquire whether they correct their children as is fitting; whether they take care that they learn Christian doctrine; whether they avoid the company of people of bad example, and especially, if they are girls, whether they are very careful not to associate with young men, and much less with suspicious persons, namely, married men, religious, and ecclesiastics.

478. VI. He should question penitents, of whom there is just reason to suspect that, through shame, they have concealed some sins (such as the uneducated, women, and boys), whether they have any scruples about their past life, encouraging them to say everything. Through these questions, many souls are often freed from sacrileges.

479. VII. Even if there is a great throng of penitents, he should not hasten more than is necessary, so that he may hear the confessions of many.

[*Latin ed. p. 605*]

480. VIII. When someone confesses a grave sin, and especially if they have committed it repeatedly, it is not enough to simply inquire about the nature and number of the sins; rather, one must ask whether they have previously been accustomed to falling into this sin, and with whom they committed the sin, and in what place? in order to understand whether it is a habit or an occasion that must be removed. Many confessors err in this regard, and from this, so much ruin results for souls; for if the confessor omits such questions, he cannot determine whether the penitent is a recidivist, and consequently, he cannot give them the appropriate means to eradicate the habit and the occasion. It should be noted what was said in chapters IV and V, in which we saw that a recidivist cannot be absolved in any way, unless after an experience of amendment, or after exhibiting some extraordinary sign of their disposition. And when it is a matter of an imminent occasion, let him act firmly, without any regard for persons, in delaying absolution, until the penitent removes the occasion, when it actually exists, as we explained in n. 64. And if the occasion is necessary, at least until they escape from the immediate one, they should use the means assigned to them to remove it.

484. In a special way, let him be inflexible in denying absolution to those who are engaged to be married, as well as to parents who permit it; nor should he believe them when they assert that there is no evil involved; for this is morally impossible, as experience teaches.

482. IX. He should also deny absolution to those who wish to enter a religious order, while they are still entangled in some vicious habit. Unless he sees that they have attained the positive goodness necessary for this state, as was said in n. 79. X. Let them also be careful, and very careful, to dissuade a young person from a religious vocation for human reasons; which cannot be excused from mortal sin, as St. Thomas teaches (Quodlib. 3, art. 14). Oh, how many inexperienced confessors, without any scruple,

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dissuade young people from the vocation to a more perfect state, guided by no other reason than to please their relatives, asserting that the sons must obey their parents! The Doctors commonly teach, along with St. Thomas, that each person enjoys their freedom in the choice of state; and that obedience is to be given more to God who calls, than to parents. On the contrary, let the confessor be aware that he himself cannot absolve certain others who, without a vocation, wish to enter the sacred orders. See Book 6, n. 803.

483. XI. In receiving the confessions of priests, let him conduct himself reverently; but let him also act firmly in making the necessary corrections, and in denying absolution, whenever it is necessary. And let him especially ask a priest of little scruples about these three things: 4. Whether...

[*Latin ed. p. 606*]

distulerit celebrationem missarum per mensem, si fuerint missæ mortuorum; et per duos, si fuerint vivorum: hoc enim non excusatur a peccato gravi (vide Lib. 6. n. 317. Qu. II.). 2. Utrùm celebravit festinanter; impendens enim in missæ celebratione minùs quam horæ quadrantem, etiamsi esset missa votiva B. Virginis, aut Mortuorum, nec etiam excusabitur a culpa gravi (L. 6. n. 400.), quoniam in tali temporis spatio non poterit non deesse notabiliter cæremoniis, aut saltem convenienti earumdem gravitati tam necessariæ ad venerationem tanti hujus sacrificii. 3. Utrùm satisfecerit obligationi divini officii, præcipuè si est beneficiatus. Non omittat etiam insinuare, ut, secundum suam capacitatem, lucrandas Deo animas, ut celebret missam cum debita præparatione, et gratiarum actione, ut incumbat orationi mentali, sine qua difficillimè bonus erit sacerdos. 184. XII. In materia restitutionis, ordinariè non absolvat pœnitentem, nisi priùs, cùm possit, restituerit rem ablatam. Nihilominus advertat multi excusari a restitutione ratione præscriptionis cum bona fide. Et hic notandum, 4. Bona mobilia, quando adest titulus præsumptus, præscribi spatio trium annorum; immobilia verò spatio decem annorum inter præsentes, et viginti inter absentes. 2. Probabile esse præfatam præscriptionem valère in foro conscientiæ, etiam in illis locis, in quibus in foro externo non viget lex præscriptionis, ut in regno nostro, ob difficultatem probandi bonam fidem. Excipiendæ verò sunt præscriptiones illæ, quæ expressò prohibentur ab aliqua lege municipali, ut ex. c. in regno nostro reprobatur præscriptio hæredis, quoties testator malā fide possederit. Videantur aliæ doctrinæ circa præscriptionem relatæ in Morali (Lib. 3. n. 504. usq. ad. n. 547.). 185. XIII. Si pœnitens alicujum acciperit injuriam, propter quam inimicus sit inquisitus in curia, non absolvat illum, (ordinariè loquendo) nisi priùs in scriptis fecerit remissionem. Videatur præsens Praxis n. 38. 186. XIV. Quando prævidet monitionem non esse profuturam, et pœnitens est in bona fide, illam omittat: præserim quando agitur de nullitate matrimonii jam contracti. Excipienda tamen est obligatio denuntiandi confessarios sollicitantes in materia

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turpi, quoniam confessariis directè est injunctum præceptum imponendi omnibus sollicitatis hanc obligationem. Vide Praxim. n. 8. 9. et 12. 487. XV. Curet, ut omnes in confessione eliciant actum contritionis, nisi certè præsumat pœnitentem jam ritè fecisse: nec omittat præbère illis motiva attritionis, et contritionis eo modo, quo annotavimus n. 10. Et speciali modo advertat, si pœnitens venerit indispositus, tenèri confessarium, quantùm fieri potest, eum disponere ad absolutionem. Vide n. 7. in fine. 188. XVI. Non absolvat pœnitentes illos, qui afferunt tantummodo.

[*Latin ed. p. 607*]

Venial sins, but habitual ones; unless he recognizes them and truly repents, and intends to amend at least some of them; or if he does not present as material for confession some graver sin from his past life, as we noted in n. 99. Oh, how many invalid confessions, which are truly sacrileges, are made because of the negligence of confessors? 189. XVII. He should only impose those penances which he judges to be easily fulfillable by the penitent, as we said in n. 44. But he should ensure that they are medicinal, such as, frequent reception of the sacraments, visits (1), recommending oneself to God in the morning and evening, reading a spiritual book, joining a religious association, and the like. 190. XVIII. To devout people who frequent the sacraments, he should not fail to suggest the practice of mental prayer, and should demand an account from them regarding it, or at least ask whether they have practiced it. By employing this minimum diligence, every confessor can sanctify many souls. And let him not be reluctant to grant frequent communion, whenever he sees or reasonably believes that the penitent will derive benefit from it. 194. XIX. To scrupulous people, he should first of all suggest obedience, and he should always impress upon them that by obeying they will be secure; but by disobeying, they will expose themselves to the danger of damnation. He should always, and rigorously, demand obedience, always speaking boldly; for if he speaks with fear, he will confuse them even more than before. He should give them general rules for resolving their doubts, as it will be most helpful to each one; e.g., to those who always doubt about their past confessions, he should order them not to confess further, except those sins which they certainly know to have been mortal sins, and which they certainly know they have never confessed. And in this matter, the confessor must act most consistently, never listening unless he obeys; for if the confessor yields even once, the penitent will never be cured. Some confessors cause great harm to these souls by listening to them. To others who fear that their individual actions are sins, he should urge them to overcome their scruples, and to act freely whenever they are not certain that a sin has been committed. 492. XX. When choosing opinions, when it is a question of protecting the penitent from the danger of a formal sin, the confessor should not infrequently use the more lenient opinions, as far as Christian prudence allows. But when

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some opinion makes the danger of a formal sin more likely, then he should certainly advise the stricter opinion. See the words in n. 65. I say advise, because when an opinion is probable, and the penitent wishes to follow it, he cannot deny him absolution for a certain right that he has acquired through a confession already made of his sins, as in n. 445. 493. XXI. In hearing the confessions of women, and in dealing with them, (1) i.e., visits to the Blessed Sacrament.

[*Latin ed. p. 608*]

Let him, therefore, employ towards her a greater severity, which is fitting according to prudence; and therefore, let him refuse small favors, avoid familiarity, and all other things which might be a cause of attachment. How many confessors, and through their negligence, how many souls, both their own and those of the penitents, have been lost because of this! 494. XXII. Let him be humble, and not presume upon his own teaching; therefore, let him frequently pray to God for the merits of Jesus Christ, and especially in doubtful cases, that He may grant him light to resolve the doubts properly: "I called, and a spirit of wisdom came to me," Wisdom 7:7. And therefore, the confessor who does not pray will scarcely proceed correctly; and in more complex doubts, or of greater consequence, he should not fail to consult other learned men, and of greater experience. He should especially conduct himself in this manner when directing the soul of someone elevated, and who has been given some supernatural graces by God, when he himself is somewhat inexperienced in this matter. Some, who have barely tasted the knowledge of mystical things, are ashamed to seek advice from others: they do not behave in this way as truly humble men; these not only seek advice, but they seek it from many, whenever it is necessary; but they also feel no difficulty whatsoever in urging such souls to consult with more experienced masters, for guidance; or at least, to submit to their judgment. The confessor should never receive such souls on festive days, but should then give place to those who are more in need, and especially to the poor from the countryside. § II. Admonitions to Parish Priests. 495. It is fitting here briefly to note certain particular obligations of parish priests concerning the care of their flock. 496. I. The parish priest is bound to instruct them concerning the mysteries of the faith, and other matters necessary for salvation, such as: 4. The four principal mysteries; namely, that there is one God, who is almighty, most wise, the Creator and Lord of all things, merciful, and more beloved than any good; and especially that He is the just rewarder of both the good and the wicked; moreover, the mystery of the Most Holy Trinity, the Incarnation, and the death of Jesus Christ. 2. The sacraments necessary, such as Baptism, the Eucharist, Penance, and the others, at least when they are to be received. 3. The articles of the Creed, among which are especially the virginity of the Most Holy Mary; the session of Jesus Christ at the right hand of the Father, namely, that He sits in

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heaven with the Father in equal glory; the resurrection of the body at the final judgment, accomplished by the Lord Christ; the unity of the Church of Rome, in which alone salvation of souls is found; and finally, the eternity of paradise and hell. All of these things each faithful person is bound to know under a grave penalty. 4. The precepts of the Decalogue, and of the Church. 5. The Our Father, and the Hail Mary, and the acts of faith, hope, love, and contrition. He sins gravely who neglects to know these things (which...

[*Latin ed. p. 609*]

It is necessary to know not only the names, but also the meaning, of these things; therefore, a parish priest gravely sins, as the Doctors commonly say, if, either by himself, or through another suitable person (whenever he is legitimately hindered), he omits to instruct his parishioners, both boys and adults, in the essentials of the faith, if they are ignorant of them, as is stated in the Council of Trent (Session 5, Chapter 2). Therefore, whenever he sees fathers or lords not taking care to send their children or servants to be instructed, he is bound to take appropriate measures with the Bishop, who, as is stated in Trent, Session 25, Chapter 3, can compel parents even through ecclesiastical censures. Good pastors keep a record of the children so that they may know who are lacking. Indeed, Croix states in book 2, question 149, and book 3, page 1, number 767, that if there are some uneducated people who cannot come to the Church because they must care for their homes or flocks; if these people are in grave spiritual need, the parish priest must privately approach them to instruct them, at whatever inconvenience to himself, as the same author says. At the very least, when it would be too difficult because of the large number of such uneducated people, he should try to examine and instruct them during the time of the Paschal precept; or when they come to ask for the sacraments of Confirmation or Marriage. It is also worthwhile for the parish priest to inquire of teachers and mistresses to ensure that they properly instruct boys and girls about the doctrines and the means of living well in the fear of God.

497. II. The parish priest is bound to administer the sacraments himself, whenever the parishioners justly request it. And if he appoints an economist, he must carefully examine the economist's life and knowledge; otherwise, he will have to answer to God for all the inconveniences that will arise later. Furthermore, he is bound to assist the dying, unless another suitable person is present. He is especially bound to provide assistance to dying sinners, because these people are in grave need of his assistance. And with regard to the Anointing of the Sick, he must pay attention to what is stated in the Roman Catechism (Part 2, Chapter 6, number 9): "Those gravely sin who fail to anoint the sick at that time, when they are already deprived of all hope of salvation, and are beginning to lose their life and their senses." He is also bound to inform himself whether his subjects have fulfilled the Paschal precept; Barb. de Off. Par. c. 2, n. 7, and Segneri Par.

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Instr. c. 23. And he must be very careful never to give communion to anyone without proper preparation.

498. III. The parish priest must also be careful not to grant the clerical habit to boys or adolescents who do not exhibit the proper ecclesiastical character in their behavior. He must then diligently instruct those of his clergy who are already wearing the habit; otherwise, if they are left without instruction and with corrupt morals, they will, either legitimately or illegitimately, advance to the orders, to the great scandal and detriment of his city. I omit here to speak of the greatest reason, which is pleasing to God.

[*Latin ed. p. 610*]

Those pastors will be held accountable who demonstrate diligence in ordaining, those whom they know to be unworthy, or who present themselves for ordination without prior, careful inquiry into their suitability.

499. IV. The pastor is obligated to inquire about those who live in mortal sin, so that he may correct them; especially concerning animosities and scandals among the betrothed, so that, as far as possible, he may bring about a remedy. St. Thomas says (2-2, question 33, article 2, ad 4): "He who has spiritual care of another ought to seek to correct him from sin." And when a scandal exists involving a person of power (and especially a priest), to whom he cannot himself offer a remedy, he must at least inform the Bishop about it, so that an appropriate remedy may be provided; and for any reason, he cannot omit this. The good shepherd is obligated to give his life for his sheep.

500. V. He must take care that marriages are not celebrated long before the marriage itself takes place; for once the betrothal is complete, for the entire time that precedes the wedding, both the betrothed and their parents will be in mortal sin.

501. VI. When in any city there are notable problems that the pastor cannot remedy, he is obligated to take every measure to obtain a mission. And it will always be beneficial to invite even external priests for the good of the souls of the faithful; and even more so if a preacher for Lent does not come to his town to hear confessions; but the pastor who rejects missions arouses a great suspicion about his integrity (1).

502. VII. The pastor is not only obligated to remove evil, but also to promote good, as all good pastors do, who never fail to exhort to frequent use of the sacraments and the congregations, to visiting the Blessed Sacrament and the Divine Mother, to novenas, to the Venerable Association, when it is offered as Viaticum, and above all, to mental prayer, about which we will explain the practice and an easy method in § III, which can serve pastors and confessors to instruct others in it.

503. VIII. The pastor is obligated to preach on Sundays and the principal

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feasts; from which the Doctors (see book 4, numbers 269 and 360) affirm that a pastor gravely sins who omits preaching for a continuous month, or for three months intermittently, except for two months in which the Council allows pastors, for a just cause approved by the Bishop, to be lawfully absent. And it should be noted that the Council (session 1) stated that the Proposition of the Synod of Pistoia, which declared that regular exercises, which are called missions, "never, or at least very rarely, achieve complete conversion," and that the external acts of repentance that appeared were "nothing other than transient flashes of natural concession," was declared in the Constitution *Auctorem fidei* by Pope Pius VI on August 28, 1794, to be "rash, resounding with great error, pernicious, and injurious to the pious and salutary practice of frequenting the Church and being grounded in the Word."

[*Latin ed. p. 611*]

5. c. 2. de Ref.) having commanded that pastors nourish their flock with the divine word, delivering sermons that are easy to understand for their audience, so that the people may grasp what is being preached to them; for it is known that, just as faith is spread through preaching, so too it is preserved through the same means. Therefore, sermons that are not similar to the manner of preaching used by Christ and the Apostles, who preached "not in persuasive words of human wisdom, but in demonstration of the Spirit and of power," as the Apostle says, will be of little benefit to the people. Therefore, the Very Reverend Father Avila rightly called those who preach with empty ambition "traitors" to Christ. And Father Gaspar Sanctius said that there are no more cruel enemies of the Church of God than those who, by preaching in this way, are the cause of many souls perishing, souls who, if they were preached to according to the example of the Apostles, would certainly be saved. Saint Francis de Sales said that empty words, flowery phrases, and useless descriptions are the plague of preaching, the sole purpose of which should be to move the hearts of the listeners, and not merely to feed the intellect in a useless manner. Experience has already taught us that souls do not turn to good through such sermons, which are adorned with so many figures, tropes, and rhetorical devices, because God does not bestow his help on vanity. And this is said of all preachers who preach out of vanity, but especially of those who have the care of souls, to whom the Council, in the aforementioned passage, prescribes: "Archpriests, vicars, and all those who have charge of parishes... those who have the care of souls, whether they hold the churches themselves or obtain them in some way, by themselves or by suitable others, if they are legitimately hindered, on Sundays and solemn feasts, should feed the people entrusted to them with salutary words, according to their capacity." Note the words, "according to their capacity"; therefore, those pastors certainly contradict the Council who use a lofty style that exceeds the capacity of the

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audience.

204. It is also important to note certain matters of great importance that a pastor should impress upon the people to whom he preaches. And 1. it is not enough to simply propose that sins be avoided, but also that the occasions of sin must be removed. And speaking of betrothals, those who frequent the homes of the betrothed, as well as their parents who allow it, cannot be absolved unless they remove these occasions.

205. 2. He should insist upon the fact that those who frequent taverns are committing many sins there, besides drunkenness, namely blasphemies, quarrels, scandals, obscenities, discord with their families, defrauding their families of food, etc.

206. 3. He should often rebuke and condemn the vice (which is general, especially in Kampen and in workshops) of speaking dishonestly; and all the more so if these dishonorable words are uttered in the presence of children or young women.

[*Latin ed. p. 612*]

In diverse places of Sestri Ponente. Because of these shameful words, how many perverted boys there are! And let him admonish parents, masters, and workshop owners, to be vigilant in correcting and punishing their sons, or servants, who utter these words, especially during the harvest and grape-picking seasons.

207. He should insist on showing the enormity of sacrilege committed by those who confess and receive Holy Communion, while concealing some sin out of shame. And to make them grasp the horror of such a crime, let him frequently recount some terrifying example from those who, ashamed of some sin, have sacrilegiously confessed; and for this, he can especially use that book by Father Vega, entitled "Casi della Confessione," etc.

208. He should frequently point out the necessity of sorrow and a firm purpose for confession, even for venial sins, exhorting that no one should approach absolution unless they have at least some true sorrow for some venial sin of which they accuse themselves; or unless they reveal some certain sin from their past life, which they have already confessed, and for which they truly repent, so that the confession may be valid. And since the uneducated people understand little how sorrow should be, let him frequently show that those who are repentant, in order to confess validly (whether their sorrow is contrition or attrition), must feel such aversion for their sin that they hate it and abhor it more than all other evils.

209. He should encourage them to accustom themselves, in moments of anger, instead of blasphemies or curses, to say: "Let my sin be cursed, let the demon be cursed;" or to say: "Most Holy Mary, help me. Lord, grant me patience."

210. He should inspire horror for superstitions, or vain observances,

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which are commonly practiced by many for the purpose of curing illnesses, or detecting thieves.

211. He should urge parents to correct their children, especially when they are young, whenever they blaspheme, or steal, etc. Also, they should be vigilant in observing and inquiring with whom they associate; and they should forbid them from associating with bad companions, and with people of diverse Sestri Ponente. Also, they should not allow their children to sleep in their bed; for either they are too young, and there is fear that they will suffocate; or they are older, having already passed the age of six, and there is fear that they will be given some scandal. And even less should boys and girls be allowed to sleep together.

212. He should constantly remind his parishioners to overcome internal temptations (especially against chastity) by invoking the most holy names of Jesus and Mary; for this is the greatest remedy against temptations.

213. He should constantly also remind that if anyone falls into mortal sin, they should immediately resolve to confess as soon as possible.

[*Latin ed. p. 613*]

Let him recover the grace that has been lost; and let him snatch this deception of the demon from them, for to God it is the same to remit one sin as to remit two; for it can happen that God will wait for repentance after one sin, but after a second, He will abandon them.

214. Teach [them] the twelve actions in which each person ought to exercise himself in the morning, at midday, and in the evening; and so that they may have these in mind, we briefly describe them here.

— Actions to be performed in the morning.

I. Make the sign of the cross upon yourself, and then say: "I adore you, Lord God; and I give you thanks for all the benefits you have conferred upon me, and especially because you deigned to watch over me this night."

II. "I love you with all my heart, and whatever I may have to suffer today, and whatever I may do, I offer it to you in union with the actions and sufferings of Jesus and Mary; with the intention of gaining all the indulgences that I can, for the benefit of the souls in Purgatory."

III. "I propose to avoid every sin and every occasion of sin today; and I beseech you, for the love of Jesus Christ, to grant me perseverance. I propose, especially in adverse circumstances, to obey your will, always saying: 'Lord, may your will be done.' Jesus, my Jesus, do not remove your hand from me today. Most Holy Mary, protect me. Angel of the Guard, and you, holy Advocates, be my help."

Then recite the Our Father, the Hail Mary, and the Creed, and three times the Hail Mary for the purity of the Most Holy Mary.

— When beginning to work, say: "Lord Jesus, in union with your most perfect works, I commend this work of mine to you, to be governed accord-

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ing to your will."

— Before a meal: "Bless, O Lord, this food, and also me, that I may not commit any fault in eating it, and that all this may be for your glory."

— After a meal: "I give you thanks because you have bestowed good things upon me, your enemy."

— At the sound of the clock: "Jesus, my Jesus, I love you; do not allow me to offend you."

— If some temptation arises, repeat: "Jesus and Mary."

— If a fault has been committed in some sin: "My God, I repent of having offended you; I do not wish to do this again."

— And if the sin has been grave, let him confess it immediately.

— In the evening, as he prepares for bed, let him give thanks for the good things that have been bestowed upon him. Let him examine his conscience, and then let him elicit an act of sorrow. Then let him elicit Christian acts, of which an example is given below in n. 286.

Encourage all mothers to have their children practice these actions daily. Furthermore, let them know that parents are obligated to take care that their children frequently receive the sacraments; for if they do not frequently approach them, they easily lose the grace of God; and parents ought to foresee this harm.

Moreover, let them be warned that they sin if, without a just reason, they prevent their children from entering into marriage, or if they force them into marriage against their will. (See book 6, n. 849. — cf. Conveniunt, ad VI). As also sin the children who enter into marriage against the just will of their parents. (book 6, dict. n. 849).

215. Also, [the pastor] is not only obligated to prevent evil, but also to promote good.

[*Latin ed. p. 614*]

He should encourage the people to visit the Most Holy Sacrament daily, and the Blessed Virgin Mary. And this visit can be made in the evening by him personally, together with the people entrusted to him, designating a time more convenient for the people, as this practice has been introduced with great benefit in many regions. And he should encourage those for whom it is not convenient to visit the church, to do so from their own homes. Above all, he should urge the people to attend Mass. And to all, he should encourage frequent Communion, preceded by due preparation of the soul, and followed by prayers of thanksgiving, teaching them the practical way in which these actions should be performed.

216. He should diligently strive to render his flock devoted to the devotion of the Virgin Mary, declaring how great is the power and mercy of this divine Mother in helping her devotees. Therefore, he should encourage them to recite the five decades of the Rosary daily with their families, to fast

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on Saturdays, and to celebrate Novenas on the feasts of our Lady, which he himself will announce from the altar whenever they occur. It would be very commendable if he were to give a short talk about the Blessed Virgin on Saturdays, always relating some example, and once a year to celebrate a solemn Novena of our Lady with a sermon and exposition of the Most Holy Sacrament; and for this purpose, he can use among others that book which I have published for this purpose, entitled "Glorie di Maria," in which he will find gathered materials and examples. Happy is that parish priest who keeps his parishioners fervent in devotion to the most blessed Virgin; for with the help of the same Virgin, they will lead a virtuous life, and he himself, at the end of his life, will have the same faithful and powerful advocate. Finally, he should above all encourage them to become accustomed to commending themselves to God more often, asking for His holy perseverance through the merits of Jesus Christ and Mary. He should also preach more often that the gift of perseverance is not granted unless it is requested; "Ask, and you shall receive." And he should make known that promise of Jesus Christ, that whatever we ask the Father in His name, He will give it to us: "And in that day you shall not ask me any thing. Amen, amen, I say to you: if you ask the Father any thing in my name, he will give it you." (John 16:23). He should also encourage the practice of mental prayer, and he should ensure that it is practiced daily, or at least on feast days, in the church with the people, also teaching them how to practice it at home; therefore, the following instruction is added here, in which the necessity and practical method of mental prayer are explained.

§ III. A Brief Practice of Mental Prayer.

217. There is no doubt that, due to a lack of consideration of eternal truths, the world is steeped in sin, and hell is filled with souls.

[*Latin ed. p. 615*]

The land is desolate, because there is none who considers it in his heart. Jeremiah 12:41. On the contrary, the Holy Spirit says that he who frequently remembers death, judgment, and eternity, will be freed from sins: "In all thy works remember thy last end, and thou shalt never sin." Ecclesiasticus 7:40. A certain author says that if he were to ask the damned: "What are you doing in hell?" the majority would answer: "We are here because we did not think of hell." St. Vincent de Paul said that if a sinner heard a mission or spiritual exercises and did not convert, it would be a miracle. Already in mental prayer, God speaks: "I will lead her, and I will make her to speak to her heart." Hosea 2:14. God certainly speaks better to every preacher. All the saints became saints through mental prayer. And we know by experience that those who devote themselves to mental prayer find it difficult to fall into mortal sins, and if, by chance, they do fall into them, by persevering in prayer, they quickly recover and return to God. Mental prayer and sin cannot coexist. A certain servant of God said that

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many recite the Rosary, the Office of the Virgin Mary, fast, and yet continue to live in sin; but it is impossible for the one who does to interrupt prayer to lead a life offensive to God; for he will either neglect prayer, or he will cease from sin. But if he does not neglect prayer, he will not only abandon sins, but he will remove his love from creatures and turn it to God. "In my meditation, my heart burns." Psalm 38:4. Prayer is the furnace where souls are inflamed with divine love. 218. Speaking of the place where prayer should be offered, the Church is the most suitable; but for those who cannot go there or live there, every place will be suitable for prayer, whether it be a house or a villa. Even the journey and the work do not hinder prayer, since at that time also the mind can be raised to God. How many peasants, when they have no time or place left for work and travel, offer their prayers? For they who seek God in every place and time will find Him. 219. As for the time, the morning is more suitable. Those who are at work during the day will not have a good outcome, if each one has neglected to say his prayers in the morning. Prayer should properly be offered twice a day, in the morning and in the evening; but if there is no opportunity in the evening, let it be done at least in the morning. V. Charles Carafa, founder of the work of the most pious, said that one act of love, made with fervor of spirit in the morning prayer, is enough to keep the soul in its fervor throughout the day. As for the time to be devoted to prayer, the parish priest or confessor should guide themselves according to their prudence. It is certain that to reach the sublime degree of perfection, the space of the middle hour is not sufficient. However, this time will be sufficient for beginners; but they should be diligently reminded not to neglect prayer when the time of desolation comes. Let what was said in n. 425 be observed. But let us proceed to the practical method of prayer, which...

[*Latin ed. p. 616*]

It is fitting to teach. Prayer consists of three parts: preparation, meditation, and conclusion. In preparation, there are three acts by which one ought to exercise oneself, namely, faith through the presence of God, humility, and supplication for divine light. Say:

1. "My God, I believe that you are present to me, and, plunged in the abyss of my nothingness, I adore your majesty."

2. "Lord, because of my sins, I should now be suffering in hell; I repent of having offended you, spare me through your piety."

3. "Eternal Father, through Jesus and Mary, grant me your light in this prayer, so that I may receive fruit from it."

Then, say once the Angelic Salutation to the Blessed Virgin Mary, so that she may obtain this light for you, and once the "Glory be to the Father," to Saint Joseph, your guardian angel, and your patron saint. These acts should be performed with attention of mind, but briefly, and then proceed immediately to meditation.

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220. Regarding meditation, it is helpful for those who know how to read to use a book, pausing where they feel their mind is moved. Saint Francis de Sales says that in this matter, we ought to imitate the bees, which remain on one flower until they have extracted all its honey, and then move on to another. But those who do not know how to read should meditate on the latest benefits of God, and above all, on the life and passion of Jesus Christ: "This," says Saint Francis de Sales, "should be our ordinary meditation." Oh, what an excellent book is the passion of Christ for devout souls! There, one perceives the malice of sin and God's love for mankind better than in any other book. Once, a certain image of the Redeemer spoke to the Venerable Father Bernard of Corlione, and asked him if he would like to learn to read? And the Crucifix replied: "What does it matter to you to read? What use are books to you? I am your book; I am enough for you."

221. However, it must be noted that the progress of mental prayer does not consist solely in meditation, nor so much in meditation as in making affections, in praying, and in deliberating about actions: and these are the three fruits of meditation, as indicated above in n. 423. Therefore, after someone has meditated on some eternal truth, and after God has spoken to their heart, it is necessary that they, in turn, speak to God with their heart, eliciting affections, such as are the acts of faith, or the actions of thanksgiving, adoration, praise, humility, and above all, love, and contrition, which is also an act of love. Love is that golden chain which binds the soul to God. Every act of love is a treasure, through which we are made certain of God's friendship: "For she is an infinite treasure to men: which they that use, become the friends of God, being commended for the gifts of discipline." Wis 7:14. "I love those who love me." Proverbs 8:17. "He who loves me shall be loved by my Father." John 14:21. "Charity covers a multitude of sins." 1 Peter 4:8. Note what is said in the treatise on mortal sin concerning this matter, book 6, n. 442. To the Venerable Sister Mary Crucifix, a great flame was seen, into which, when some straw was thrown, it was immediately seen to be consumed.

[*Latin ed. p. 617*]

It has been shown that all sins committed are removed and consumed in the soul through a single act of love. Furthermore, it is taught by St. Thomas that every act of love merits one degree of eternal glory. Every act of charity merits eternal life. Acts of eternal charity are to say: "My God, I esteem you above all things. I love you with all my heart. I desire that you be loved by all." Or to surrender oneself entirely to the divine will, saying: "Lord, do what you will, for I desire to know what pleases you to be done concerning me, for I am ready to suffer all things." Or to offer oneself to God without reserving anything for oneself, saying: "Behold me, and all that belongs to me, and dispose of me according to your will." And these acts of offering are acts of love, which are very pleasing to God; therefore, St. Theresa

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offered herself to God fifty times each day. But among others, it is most excellent to say: "Rejoice, my God, that you are, that you are the supreme being, needing nothing." When the soul recognizes itself to be elevated by a supernatural or infused recollection (as explained in n. 433), it should not strive to perform other acts, except those to which it feels itself gently drawn by God; rather, it should attentively attend to what God is working within it. Otherwise, it might hinder the divine operation. Furthermore, it should be upon noted, as St. Francis de Sales observes, that if the mind is ever moved by the inspiration of the Holy Spirit to a certain good affection before consideration, then, after consideration, place should be given to the affections, for consideration serves to arouse the affections; therefore, once the goal is attained, the means should be abandoned.

222. Moreover, it is very helpful to repeat petitions in prayer, with humility and confidence, exposing to God his own light; for the remission of sins, perseverance, a good death, paradise, and above all, the gift of his own love. St. Francis de Sales urged that, among other graces, the grace of divine love should be requested with more fervent zeal, because (he said) once love is obtained, all other graces are obtained. Therefore, it will be sufficient for the soul, if, because of the desolation in which it finds itself, it cannot do anything else; I say, it will be sufficient for it to repeat this petition of David: "O God, turn your attention to my help; O Lord, help me, and quickly assist me." Venerable Father Paul Segneri said that he had learned through experience that there is no exercise more useful to souls in meditation than to repeatedly ask, in the name or through the merits of Jesus Christ, who made to us that great and delightful promise, as mentioned above: "And in that day you shall not ask me any thing. Amen, amen, I say to you: if you ask the Father any thing in my name, he will give it you."

223. Moreover, it is fitting, in prayer, at least at the end, to deliberate on something, not only in general, such as to resolve to avoid all deliberate sin and to surrender oneself entirely to God; but also in particular, such as...

[*Latin ed. p. 618*]

It is more profitable to avoid a particular fault to which one is often prone, or to pay closer attention to a particular virtue, regarding which one has frequent opportunities to practice, such as enduring the annoyances of a superior, or obeying a particular rule more diligently, and to apply greater effort to restrain one's desires in certain matters; and one should not depart from prayer unless something has been decided upon in particular. 224. Finally, the conclusion of prayer is completed with three actions: 1. Thanks should be given to God for all the insights received during meditation. 2. One should propose to faithfully observe all the resolutions made. 3. One should pray to the eternal Father, that through Jesus and Mary, He may grant His help to faithfully fulfill what has been promised to Him. And at the end, the one praying should commend to God the souls in Purgatory,

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the prelates of the Church, sinners, and all those connected to him, friends, benefactors, by reciting once the Our Father and the Hail Mary, which are the most useful of all the prayers that we have learned from Christ and the Church. 225. However, before leaving prayer, it is necessary (as St. Francis de Sales says) to gather bundles of flowers, so that the whole day may be fragrant with them, namely, to choose, above all others, one or two things in which the soul felt itself most moved, so that the rest of the day may reflect upon them. 2. One must strive to put into practice the resolutions made, both in matters of small and great importance, which occur to us, for example, to overcome with gentleness the annoyances that are inflicted upon oneself by someone who is angry with oneself; or to mortify oneself in sight, hearing, and speech. And it is especially important to preserve, with silence as much as possible, those pious movements of the affections that God has communicated to one in prayer, otherwise, if one immediately turns to external actions and useless conversations, that fervor of devotion conceived in prayer will quickly cool and become ineffective. 226. Above all, the director should diligently remind his penitent not to interrupt prayer, nor to take any time away from it, especially during times of aridity, and he should never be discouraged, even if he has perceived the soul to be in a state of aridity, and devoid of all fervor of devotion. "How many courtiers," said St. Francis de Sales, "go to see their honored prince, and are content if they are merely looked at by him? We go to prayer to offer obedience to God, and to comply with His will; if He wishes to speak to us, and to favor us with His consolations, we will repay Him for such a grace; but if not, it will be sufficient for us to be in His divine presence with a calm spirit, to pray to Him, and to expose our needs to Him; and if the Lord does not speak to us at that time, He will certainly accept our attention, and our fidelity, and will hear our petitions because of our trust in Him."

[*Latin ed. p. 619*]

CHAPTER XI. AND THE LAST. 227. There is no work more pleasing to God, nor more conducive to the salvation of souls, than to assist those in the extreme danger of death, so that they may die piously; for at the hour of death (from which hangs the eternal life of each individual), the powers of hell are stronger, while those of the infirm are weaker. To show how pleasing He finds the assistance given to the dying, God often showed to St. Philip Neri angels assisting religious ministers attending to the sick. 228. This is not only the duty of pastors, to whom the care of souls belongs by office, but also of all priests. However, the Roman Ritual speaks especially of pastors, saying that a principal part of their duty is to care for the sick; therefore, it desires that they, as soon as they learn that one of their parishioners is sick, should not wait for the sick person to summon the pastor, but that the pastor himself should proactively visit the sick person; and this not only once, but more frequently, if the pastor notices that the sick

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person is also suffering spiritually. If, however, he is legitimately hindered, he must provide for this at least through another priest, provided that this priest is pious and prudent; for some priests, in exercising this duty, are more harmful than helpful, both to the sick and to the families of the sick, whose well-being the assisting priest should also consider. The Ritual also warns that if the priest is unable to be present, the pastor will see to it that this is provided for at least through some pious layperson, endowed with Christian charity, who will offer holy words to the sick person. § I. Admonitions to the Priest Assisting. 229. I. The priest should discreetly inquire of the doctor whether the illness is mortal. I say discreetly, because it is a detestable practice of some doctors to deceive the sick, so as not to distress them and their relatives; almost as if to tell a sick person that he must confess (which they are obligated to do, when the danger is known) is the same as announcing his death. 230. II. He should inquire from relatives, friends, and even from the sick person himself, about the nature, character, and defects of the illness; also, about what indulgences he has received, and especially if he is obligated to make restitution for any good or damage; if he has any hatred or improper friendships, so that he may be able to offer a remedy suitable to all. He should take care not to mention to the sick person any persons he hates or loves improperly, unless he is compelled to do so by necessity. To those who are wounded, after everything necessary for their remission has been provided, he should not inquire as to the cause or manner in which they were injured; and if the sick person speaks of this, he should divert the conversation to another topic.

[*Latin ed. p. 620*]

He should take care. And likewise, if necessity does not urge, nor concerning lawsuits, children, property, or other related matters, he should not speak a word. 231. III. Therefore, after having perceived the illness to be dangerous, first of all, he should not speak to the sick person about confession, but only gently inquire about his infirmity, his pains, and how he is feeling. From this, he should encourage him to conform himself to the will of God, and to join his sufferings with those of Christ in prayer for the suffering person, and also to patiently bear them for the satisfaction of his sins. And thus, gradually, as prudence allows, he should lead him, by asking questions about the time since his last confession, to confession. He should warn him to place all his hope in God, who is able, if He wills, to restore him to health. But at the same time, he should gradually make the sick person aware of the danger of his infirmity. He should especially warn him not to place all his faith in doctors and relatives, who may perhaps conceal the severity of the illness from him, so as not to distress him. He should say that it is wise to foresee the future. He should encourage him to receive confession while his mind is still sound, which will also be beneficial for the health of his body (if it is advantageous for his soul). The

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Bishop of Beauvais recounts the case of a dying man who, as soon as he had confessed his sins, rose from his bed unharmed. Similarly, Cantipratensis narrates that a certain knight, after many medicines had proved ineffective, was immediately cured by the power of confession. 232. However, if the sick person seeks delay, and there is no imminent danger of death, lethargy, or delirium, he may grant him this. He should, however, ensure that the person sets a time, such as the evening or the next day, for confession. But if there is imminent danger, he should remind him, as did Saint Augustine, that God has not promised to wait for sinners, but only to spare them if they do penance: "Tomorrow He has not promised, perhaps He will give it, perhaps He will not give it." If, however, the sick person still cannot be led to confession even after these warnings, the priest should never abandon him, but should sometimes use arguments of fear, and sometimes arguments of hope, to rouse him; and he should ensure that both private and public prayers are offered to God for the salvation of this unfortunate person. 233. IV. If the illness worsens, he should encourage the sick person to make suitable arrangements for his domestic affairs; this is beneficial for the peace of the family, and even more so if it is necessary for the relief of his conscience. In this, however, the priest should be very careful not to suggest any particular financial arrangement. If the sick person has needy brothers or sisters, he should warn him that he is bound by a serious obligation to leave them his property, at least what is sufficient to meet their needs. However, this serious obligation does not seem to apply to more distant relatives. Observe what is said in the work, book 4, number 946. If, however, the sick person wishes to leave something for his soul, he should warn him not to impose this burden on his heirs; for experience teaches that very few pious bequests are fulfilled, but rather he should encourage him to leave a body, or a sum of money, for the Sacraments, or...

[*Latin ed. p. 621*]

Another pious work to be performed. Let the priest be careful not to advise the sick about anything that might be prejudicial to others, since it does not befit the ministers of Christ to stir up hatred against others.

234. V. When dealing with the uneducated, while suggesting Christian actions to them, he should always speak in the Italian, or indeed, the vernacular language. With the educated, he should use more refined words, and sometimes even short passages taken from Scripture in Latin, but he should use them sparingly. However, the Ritual warns that the priest, by speaking too much and with too many sentences, as some are wont to do, may rather confuse the sick person than help them. Father Recupitus, of the Society of Jesus, recounts that, when he was near death, he did not understand what was being said to him, but only a certain unpleasant murmuring; so that, in order not to further distress his mind, he was compelled to ask that they pause for a while in their speaking.

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235. VI. Besides the small images of the Crucifix of our Lord and the Blessed Virgin, which he has taken care to place near the sick person, if it can be done, he should also have larger images of the Mother of God and the Redeemer placed in his sight, so that the sick person, no matter where he turns, may see them and commend himself to them.

236. VII. He should also see to it that dangerous objects are removed from the sick person's room, such as weapons, indecent images, and especially people who might in some way provide an occasion for sin; and these should be banished not only from the room, but from the entire house. And when the sick person appears to be near death, the priest should remove everyone from his room, except for one or two who are needed to attend to him. Moreover, he should absolutely forbid anyone to enter the sick person's room, lest they provide a cause for any passion.

§ II. Remedies against temptations.

237. The principal remedies against temptations are to frequently invoke the names of Jesus and Mary, and to protect oneself with the sign of the cross. However, for certain special demonic attacks, it is advisable to note the following.

238. And I. Against temptations of the faith. This terrible temptation particularly afflicts those who have led a dissolute life, and who are too attached to themselves and to their own judgment; especially if they are learned men. Here, it is important to note that if a demon suggests to them any doubt or subtlety about the faith, they should immediately respond with a steadfast mind, saying only in general: "I believe what the Holy Church believes, which believes and confesses the truth." The priest should also encourage the sick person to give the greatest thanks to God for having been deigned to receive him into the bosom of the Church from his earliest years; and therefore, to profess that he wishes to persevere in that faith until the very end of his life. However, the most effective and useful way to repel such temptations will be to divert the mind to other things, and to evoke other various acts, namely, contrition, hope, love for God, and the like.

[*Latin ed. p. 622*]

A certain Doctor, Bellarmine, recounts that while this man was in the throes of death and attempted to discuss a certain article of faith with a demon, he was deceived, fell, and died.

339. However, if temptation persists, let the afflicted one be shown that the arguments of our faith (which are, in themselves, holy and inviolate, having been spread throughout the world by humble fishermen, confirmed by countless miracles, and by the blood of countless martyrs who sacrificed their lives for it) are clearly illuminated, and manifestly demonstrate its truth, even though, as we now see through a glass in a dark manner, the things that it teaches. For if the mysteries about which we are instructed

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were evident, where would be the merit of faith? For faith is so called because the things it teaches are obscure and not apparent. Hence it is upon the words: "Blessed are they that have not seen, and have believed." Jesus saith to him.

340. II. Against the temptation of despair. This is the principal temptation with which hell vehemently attacks the sick; therefore, the priest should be wary of speaking to them about divine justice, about the punishments of the damned, and of exaggerating their committed sins; but rather, they should be given arguments of trust in the mercy of God, in the passion of the Savior, in divine promises, and in the intercession of the Mother of God.

341. First, therefore, the motive of our hope is divine mercy, since God is called, and is truly, the Father of mercies (2 Corinthians 4:3). He Himself comes to those who do not seek Him: "They have sought me that before asked not for me, they have found me that sought me not. I said." Isaiah 65:1. God desires to save us more than we desire salvation; therefore, He pleads for those who flee from Him, as St. Bernard says: "He pleads to embrace them, and He laments that they abandon Him." He is entirely inclined to forgive: "Let the wicked forsake his way, and the unjust man his thoughts, and let him return to the Lord, and he will have mercy on him, and to our God." Isaiah 55:7. He protests that He does not will the death of the sinner: "I have no delight in the death of him that dieth, saith the Lord God: but rather that he should turn from his ways, and live." Ezekiel 33:14. He says that when the sinner detests his sins, He forgets the memory of them: "If the impious man turn from his wickedness, and do judgment and justice, shall he die in his iniquity? No, no, I will not." Ezekiel 18:21. After these divine testimonies, who could ever doubt the mercy of God? A single act of penance is sufficient to atone for countless sins. The publican, barely groaning, said: "Have mercy on me, a sinner," and he was justified. The prodigal son, as soon as he returned to his him father's feet, was embraced by his father. And David said to Nathan. "I have sinned," and Nathan replied to him: "The Lord also hath forgiven thy sin." 2 Samuel 12:13.

342. Secondly, the motive is the passion of Jesus Christ, who declared that He descended to earth for no other purpose than the salvation of sinners: "For I came not to call the righteous, but sinners to repentance." Matthew 9:13. He also declares that He will not cast out anyone who comes to Him: "All that the Father hath given me shall come to me; and he that cometh to me, I will not cast out." John 6:37. And in Matthew 18:12, He says that He is the good shepherd, who seeks out the lost sheep, and when He finds it, He rejoices...

[*Latin ed. p. 623*]

He is moved to tears, and lays his hands upon them, and it seems that he loves them all the more, as he behaves with Saint Mary of Egypt, Blessed

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Angela of Foligno, Saint Margaret of Cortona, and other penitents. Therefore, he who has a right intention should not fear being condemned by the Lord, who did not hesitate to condemn Himself to death on the cross, lest He condemn us.

243. A third reason is the divine promises. In many places in the Gospel, it is promised that those who ask for divine grace will receive it: "Hitherto, you have not asked any thing in my name. Ask, and you shall receive." John 16:24. Amen, amen I say to you, if you ask anything of the Father in my name, He will give it to you. John 16:23. And this is not only said of the just, but also of sinners, according to the passage in Matthew: "Everyone who asks receives." Matthew 7:8. Therefore, it is sufficient to ask God for graces for salvation, so that they may certainly be obtained. The Lord is good to those who seek Him. Psalm 34:9.

244. A fourth reason is the intercession of the Saints, and especially of the Mother of God, whom God desires to be our refuge, our life, and our hope, so that He may save us together with the whole Church, and so that we may say: "Refuge of sinners, pray for us; life, our hope, be saved." Therefore, the Blessed Virgin is rightly called by Blosius, "Hope of the despairing," and by Saint Ephrem, "Helper of the destitute." The same Mother of God revealed to Blessed Bridget that, just as a mother, seeing her son surrounded by the swords of her enemies, takes him into her protection, so she cares for her devoted ones, protecting them when they are tormented by demons, and to whom they commend themselves. Furthermore, she said that when a sinner approaches her, she does not examine his merits, but rather considers with what intention he comes. And God Himself revealed to Blessed Catherine of Siena that Mary had granted that no sinner who turns to her could ever be snatched away by a demon.

245. III. Against the temptation of vain glory. Saint Bernard says that vain glory is a certain arrow that penetrates lightly, but wounds deeply, especially if the person is conscious of their own conscience. Therefore, if a priest ever noticed a dying person to be too secure about their salvation, because they trusted too much in their own works, he should tell them that only our sins are our own, and that all good things we receive come from God, as it is written: "What do you have that you did not receive? 1 Corinthians 4:7. And since no one can have infallible certainty of their eternal salvation and divine grace (For man knows not whether he is worthy of love or hatred, Ecclesiastes 9:4), everyone should always fear, and work for their salvation with fear and trembling, as the Apostle says, Philippians 2:12.

246. IV. Against the temptation of impatience. If a sick person is afflicted by impatience due to the torments of their illness, let them be shown how much the martyrs have suffered for the sake of Christ, being flayed alive, burned, and slaughtered. And especially let them be reminded of all that

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innocent Jesus suffered for our love. Let the sick person be told that the pains of illness cannot be avoided; therefore, if he suffers them unwillingly, he is doing wrong now, and in

[*Latin ed. p. 624*]

Another life will follow; but if he receives this with a willing heart, not only will he be relieved from the penalty of the illness, but he will suffer fewer torments in purgatory, and will receive greater reward afterward in heaven: "Amen, amen, I say to you, that you shall lament and weep, but the world shall rejoice." John 16:20. Let him be reminded that the sufferings of the last days of life complete our eternal crown, for, as St. Bonaventure says, "to patiently endure punishments is a work more perfect than all other works," according to James: "Patience hath a perfect work." James 4:4. And thus, God treats His friends in this life, for the cross is a safer sign of our predestination. In Clara, for 28 years, lived with pains. St. Lidovina bore the weight of infirmity for 38 years. And the Divine Mother, one day, said to St. Bridget, who was suffering: "Do you know why your infirmity has lasted so long? It is because My Son and I love you very much." The Apostle greatly consoles us miserable travelers amidst the sorrows of this world, saying: "For that which is at present momentary and light of our tribulation worketh for us above measure, exceedingly an eternal weight of glory." 2 Corinthians 4:17. And elsewhere: "For I reckon that the sufferings of this time are not worthy to be compared with the glory to come that shall be revealed in us." Romans 8:18. 247. Therefore, it is necessary to urge the sick man to conform to the will of God, not only if he suffers pain, but also if the doctors are mistaken, or if those attending to him neglect his care. Hence, frequently remind him to beg for patience from God. 248. To those who find it difficult to die so prematurely, let the miseries, infirmities, and anxieties of this life be brought to mind, as well as the dangers of sin and damnation. Therefore, the saints eagerly desired death. St. Theresa said: "Alas for me, because in every moment of my life I can lose God; therefore, whenever the clock struck, she was very grateful, because the hour of this danger had passed." The holy martyrs proceeded cheerfully to the scaffold, so that they might sooner escape this danger and enjoy God. Hence, it is said in the Apocalypse (Revelation 14:13): "And I heard a voice from heaven, saying to me." 249. Encourage the sick person to give thanks to God because He did not allow him to die when he was in sin; and because He now prepares him to depart, fortified with the sacraments. Let him say that, at least, death should be accepted with a willing heart, because we escape so many minor faults, from which we cannot be free in this life. 250. Say to the sick person: "Brother, it is necessary for you to conform to the will of God, because He arranges all things for our good. Who knows if, by living longer, you would lose your soul?" But the sick person will say: "I would prefer to live, in order to make satisfaction to God for my sins, and

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to accomplish some good before death, as long as I am still able."

[*Latin ed. p. 625*]

The priest should reply: "My son, there is no penance more pleasing to God than to willingly accept death for the expiation of sins; and no act is more perfect than to accept death in order to fulfill the will of God."

254. VI. Against the temptation of attachment to worldly goods and relatives. To those who are reluctant to die because they are too attached to their possessions, the confessor should say: "These are not true goods, since they are fleeting and soon to fail, and if they do not fail, they rather torment the soul than comfort it."

252. If, however, the sick person is distressed because of a beloved wife, children, or grandchildren whom he is leaving behind, he should be gently encouraged with these words: "My son, it is ordained for all to die; all will follow you in due discretion. Now, consider your own salvation, and save your soul, and thus you will pray for them in heaven, and you will one day be blessed with them eternally. But now, what is sweeter than to set out to live with Jesus Christ, with the Queen of Heaven, and with all the Saints!"

253. If, however, he is distressed because he is leaving his loved ones in poverty, he should be told: "Listen, my son, if you attain eternal salvation, you will be able to help your loved ones much more from heaven than you can from earth. But do not doubt, for God, who feeds the birds, will not fail to provide for them." If you love them, God loves you even more.

VII. Against the temptation of hatred and vengeance. If someone is held captive by hatred because of some offense received, 1. he should be reminded of the divine precept: "Love your enemies." 2. He should be told that he who does not forgive, cannot hope to receive forgiveness from God, who says: "Dogs, away with you," (Revelation 22:15). Dogs (symbol of vengeance) are repelled from heaven. On the contrary, God promises certain forgiveness to the sinner who forgives his offender, as He says: "Judge not" (Luke 6:37). 3. He should be reminded that if an enemy has unjustly harmed him, how much more unjust is it for him to harm God? Therefore, if he asks God to forgive him, how much more should he forgive his neighbor? "As the Lord has forgiven you, so also do you" (Colossians 3:13). Finally, he should be shown how pleasing it is to God for one to forgive injuries. St. John Gualbert, after rebuking a fratricide, entered the church and, greeting the image of the Crucifix, saw the Redeemer incline his head towards him, as if thanking him for the forgiveness given. St. James embraced the one who had accused him before his death. St. Stephen prayed for those who stoned him. St. Louis, King of France, had dinner with the one who had plotted his death. St. Ambrose provided food for a long time to a certain betrayer. And above all, our Lord Jesus Christ gave the first example of this, when, placed on the cross, He prayed fervently to the

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Father for His persecutors and those who cursed Him.

[*Latin ed. p. 626*]

§. III. Various motives and affections to be suggested to the dying. 254. I. Motives of trust. We have already spoken about these above (in §. II.); the following can be added to them from Scripture: "Let not the impious hope in the Lord, nor let the wicked be strengthened in Him." Ecclesiasticus 2:41. "He is the propitiation for our sins." 1 John 4:2. "Jesus Christ gave Himself for our sins, that He might deliver us from this present world." Romans 8:32. "How then shall God refuse remission to us, who has given His own Son?"

255. Affections of trust: "The Lord is my light and my salvation, whom shall I fear? The Lord is the protector of my life." Psalm 26:1. "Into Your hands I commend my spirit; You have redeemed me, O Lord God of truth." Therefore, we beseech You, help Your servants, whom You have redeemed with Your precious blood. "In You, O Lord, I have hoped; I shall not be confounded forever." "O Jesus, hide me within Your wounds. Your wounds are my merits." St. Bernard. "Jesus, my Jesus, will You deny me forgiveness, who have not denied me life and blood?" "The Passion of Jesus, You are my hope. The merits of Jesus, you are my hope. The wounds of Jesus, you are my hope. The death of Jesus, You are my hope." "Mary, my mother, save me, have mercy on me. Our hope, pray for us." "Holy Mary, Mother of God, pray for us sinners." "Under Your protection we take refuge, holy Mother of God."

256. II. Motives and affections of contrition. St. Augustine says that at the very end of life, one should not fail to deplore one's sins. "Enter not into judgment with Your servant." Psalm 142:2. "Jesus, my Judge, spare me, before You come to judge me." "God does not despise a contrite and humble heart." "My God, oh, if I had never offended You! My Lord, You should not have been treated so by me, as I have impiously done. Father, I am not worthy to be called Your son. I have departed from You, I have despised Your grace, I have lost You deliberately: I repent with all my heart, my God, for the love and blood of Jesus Christ, have mercy on me." "Cursed be my sins, which have deprived me of God; I detest, abhor, and curse them!" "My God, what evil have I done, that You should be so offended by me? Have mercy on me for the sake of Jesus, Your Son."

[*Latin ed. p. 627*]

Never, O Lord, will I offend You as long as I live; whether it be little or much, I wish to love You. I offer You, in satisfaction for the offenses I have committed against You, my death, and the pains which I will endure until death. O Lord, You justly punish me; I have greatly offended You. But I beseech You, punish me in this life, and not in the next. O Mary, obtain for me the sorrow for my sins, forgiveness, and perseverance.

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257. III. Motives and affections of love. My God, who are infinite goodness, I love You above all things; I love You more than myself; I love You with all my heart. My God, I am not worthy to love You, because I have so greatly offended You, but through the love of Jesus, make me worthy. Oh, that all would love You! Jesus, most sweet, I desire to suffer and to die for You, that You, for my sake, might have suffered and died. O Lord, punish me as You will, but do not deprive me of loving You. My God, save me; my salvation is to love You. I desire paradise, that I may love You eternally, and with all my strength. My God, do not abandon me to hell, for I deserve it: there You would be hateful to me, but my soul cannot bear to hate You. And what evil have You done to me, O my Lord, that You should be hateful to me? Make me love You, and send me wherever You will. I wish to suffer as much as You please; I wish to die, so that I may please You. Remain with me, Jesus, and do not permit me ever to be separated from You. My God, make me entirely Yours, before I die. When will it be that I can say: My God, I can no longer lose You? Oh, my God, I would that I could love You as much as You deserve! O Mary, draw me entirely to God! My Mother, I love You very much; I wish to come to Heaven, to love You eternally.

258. IV. Motives and affections of conformity. All our good and life consists in conforming ourselves to the will of God, according to that which is written: "Life consists in doing the will of God." Psalm 27:6. God indeed wills what is for our best good. Saint Gertrude, when Jesus appeared to her, offering her life and death, responded: "Lord, what You will, and I will." Likewise, Saint Catherine of Siena, when Jesus appeared to her, offering her a double crown, one of jewels and the other of thorns, so that she might choose, responded: "I choose that which pleases You."

259. Affections. If God calls you to another life, are you content? You are content. Therefore, say always: "Lord, behold me, do with me what You will."

[*Latin ed. p. 628*]

"Whatever pleases you. May your will be done; I only desire what you will. I wish to suffer as much as you will. I wish to die when you will. I commend my soul, and my body, my life, and my death, into your hands. I will bless the Lord in every time; whether you console me, or you torment me, my God; I love you, and I always wish to love you. My God, with the death of Jesus, I join my death to yours, and thus I offer it to you. The will of God, you are my love. For the good pleasure of my God, I surrender myself entirely to you as a holocaust.

260. V. Motives and affections concerning the desire for paradise. Motives. Blosius recounts several revelations from which it is understood that in purgatory, those who tepidly desired heaven are tormented by a particular punishment, called by the mystic Doctors the punishment of desire, or languor. This present life is a prison of punishments, in which we cannot

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see God; hence, David rightly prayed: "Bring my soul out of prison, that I may praise thy name." (Psalm 141:8) And St. Augustine cried out: "Woe to me, Lord, that I may die, that I may see you." St. Jerome called death his sister, and said to her: "Open to me, my sister." Indeed, for death is that which opens the gates of paradise to us. And therefore, St. Charles Borromeo, seeing the image of death depicted with a scythe in hand, ordered the painter to erase the scythe and, in its place, to paint a golden key, as the key to heaven. Therefore, it is fitting that the priest should often speak to the dying about the blessings of the heavenly homeland, reminding them of what the Apostle said: "But as it is written: That eye hath not seen, nor ear heard: neither hath it entered into the heart of man, what things God hath prepared for them that love him." (1 Corinthians 2:9)

261. Affections. When will I come, and appear before the face of God? (Psalm 141:3) When will it be, my God, that I will see your infinite beauty, and love you face to face? In heaven I will always love you, you will always love me; therefore, we will love each other eternally, my God, my love, and everything. Jesus, my love, when will I kiss the wounds that you bore for me? O Mary, when will it be that I may see myself at the feet of that Mother, who loved me so much, and who helped me? Therefore, Advocate, turn your merciful eyes to us, and after this exile, show us Jesus, the blessed fruit of your womb.

362. VI. Affections that can be suggested to the sick person while kissing the crucifix. Sweetest Jesus, do not look at how much I suffer for you, but at what you have done for me. Remember that I am one of your sheep, for whom you died. I will gladly die for you, Jesus, my love, who suffered so much for me.

[*Latin ed. p. 629*]

Accept me, Jesus, my Lord, that I may be consumed for you, since you willed to be entirely consumed for me. Lord, you have done so much for me, more than I can ever do for you: you, innocent, and I, a sinner. Kiss, brother (the priest says to the sick man), those feet which labored so much to seek out and save that lost sheep, which is you. Pray, say: Most beloved Redeemer, I embrace your feet, as Mary Magdalene embraced them; may it please you to let me hear you say to me what you said to her. My God, have mercy on me, for the love of Jesus Christ, and make it so that I may die a good death. Eternal Father, you gave me your Son; I give myself to you. Jesus, my Lord, I have been very ungrateful to you; have mercy on me. I have deserved hell many times; not in another life, but in this one, I am being punished. If you have sought after me while I was fleeing, do not abandon me who seeks after you. Jesus, most sweet, do not permit me to be separated from you. Who will separate me from the love of Christ? Lord Jesus Christ, through that bitterness which your most noble soul endured when it departed from your blessed body, have mercy on my sinful soul

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as it departs from my body. Amen. Jesus, my Lord, you died for my love; I wish to die for your love.

263. VII. Affects which may be suggested to priests and religious who are sick.

In peace, I shall sleep and rest. My God and everything. O, how blessed I am, if I should lose all things, so that I may gain you, my greatest good. Into your hands, Lord, I commend my spirit. Do not cast me away from your presence. Jesus, most sweet, do not permit me to be separated from you. I shall die of the love of your love, which, through the love of your love, you deigned to die for. Thus spoke Saint Francis. A contrite and humbled heart, you will not despise, O God. In you, Lord, have I hoped; I shall not be confounded forever. I love you, Lord, my strength. I shall die, Lord, to see you. What is there in heaven for me, and what do I desire from you on earth? God of my heart, and my portion forever. The Lord is my light and my salvation; whom should I fear? Father, I have sinned; I am not worthy to be called your son. Turn away your face from my sins. I am yours; save me. When will I come and appear before the face of God? Who will separate us from the love of Christ?

[*Latin ed. p. 630*]

Love, grant me only with your grace, and I shall be rich, even with enough, says St. Ignatius of Loyola. My director to me, and I to him. I will sing of the mercies of the Lord for ever. Holy Mary, Mother of God, pray for us sinners, etc. Life, sweetness, our hope, hail! Refuge of sinners, pray for us. Mary, Mother of grace, Mother of mercy, protect us from the enemy and receive us at the hour of death. O salutare of those who invoke you! St. Bonaventure, § IV. Matters concerning the last sacraments, and the manner in which they are profitably received. L. Concerning confession. 264. It has been observed in practice (see our Moral Theology 2. 6 n. 260 and 486) that when the danger of death is imminent, even if the Eucharist has been administered and a lengthy confession is required, the sick person is not obliged to confess all and each sin. Furthermore, the following should be noted: 1. Even if the priest is not only at the article of death, but also in danger (as the Council of Trent, session 14, chapter 7, declared), he is bound, and in reserved cases, can grant absolution (l. 6, n. 561). However, it must be noted that the confessor who lacks the authority is bound to impose a penance on the sick person, such as an act of mortification, and to present it to a superior, otherwise he will incur penalties, l. c., n. 563, v. 2. The priest cannot grant absolution in the presence of an approved confessor; however, if an approved confessor arrives while the confession has already begun; nor can an approved confessor absolve persons who are sick in a grievous sin, as decreed by the Supreme Pontiff Benedict XIV (lib. cit., n. 653). 3. A dying person, deprived of the senses, can be properly absolved, but under the condition (which is safer) that, if possible, the

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sick person be asked if he desires absolution, and that he give some sign of repentance; or if he asks for confession, l. c., n. 481. And this is understood even if the dying person has lost the sense of the sin, l. c., by the authority and reason of St. Augustine; because, on the one hand, the condition removes irreverence from the Sacrament, and on the other hand, it is always judged that each person in such a case should strive for his salvation, and should offer some visible sign, even if, due to illness, the sign is not well understood. 4. If the sick person, even after being warned of the danger, refuses to confess, it will be best if the priest advises the doctor, according to the Bull of St. Pius V, not to visit him any further. However, if the sick person persists in his obstinacy, the doctor may again take care of him; see l. 6, n. 664.

[*Latin ed. p. 631*]

II. Concerning Holy Communion. 265. The following instructions are noted. I. It is not necessary that a sick person be completely devoid of hope of life in order to receive Holy Communion; it suffices that there be danger of death, l. 6, n. 284. II. If there is a danger of vomiting, Holy Communion cannot be given, even if there has been previous experience with an unconsecrated particle; n. 292. See also: In doubt. III. Holy Communion can also be given to children of reasonable age; it can even be given to those who are mentally unstable, provided that it is known that they have lived a holy life, but that they have confessed recently, and that there is no danger of irreverence. Therefore, it is probably permissible to try giving Holy Communion to such individuals with an unconsecrated particle. IV. It is not only permissible, but pastors are obligated to administer Holy Communion to the sick, even on Fridays, as is stated in the decree of the Holy Ritual Congregation of the year 1622. 266. The common opinion holds that a sick person who is not fasting can receive Holy Communion more than once during the same illness; at least if there is an interval of six or eight days between Communions; indeed, many Doctors require a shorter interval, see n. 284 and 285. However, if the sick person has already received Holy Communion that day, he cannot receive Holy Communion again that same day, unless there is a danger of death from some sudden illness, wound, poison, accident, or the like. Otherwise, if the sick person has already received Holy Communion while in the same state of illness, see the cited reason, n. 283. Doubt 3. 267. However, if the sick person has only confessed and expresses a desire to receive, then the priest should diligently prepare him to receive Holy Communion with a clear mind and with greater devotion; therefore, he should strive to instill in the sick person a desire to receive Holy Communion, so that, fortified by the power of the demons, he may better resist temptation and be more united with Jesus Christ our Redeemer, who desires to come to him (and says), so that he may be able to pour out his graces upon him and lead him quickly to the

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heavenly homeland; but if it is expedient, he may also be given bodily health. St. Cyril of Alexandria states that the Holy Eucharist also drives away illnesses and conquers the sick. And St. Gregory of Nazianzus reports that, immediately after receiving Holy Communion, he was cured. 268. Therefore, the priest should say to the sick person in this way: "My brother, although your health is not completely hopeless, you are nevertheless in danger; therefore, it is best that you receive Holy Communion as soon as possible; for perhaps Christ will restore your health, if this will contribute to your eternal salvation; but if you must die, the Devil will come to your aid, and will be your companion on your journey to the blessed homeland. What do you say? Do you desire to receive Holy Communion?" Indeed: "Prepare then your soul to embrace your Redeemer, who died for you. Say with all your heart: 'Come, Jesus, my Lord, come, my love, my everything, come, for my soul longs for you.'"

[*Latin ed. p. 632*]

"What do I have in heaven, and what do you desire of me on earth? O God of my heart, and my portion forever."

269. However, when the priest arrives with the Viaticum, he should take care to remove from the sick person's room those who might be a cause of distress to him, namely, his wife, his sisters, his children, etc. Then he should say to him: "St. Philip Neri, when he saw the Most Holy Sacrament in his room, exclaimed: 'My love, my love!'" Also, say, brother, say: "My love! Here is the Son of God, who for your salvation descended from heaven, became man, and willed to suffer death on the cross for you, and now He comes to you, unseen, in your very room. Be of good cheer, for He has already forgiven your sins. He has had mercy on you for your faults, and still has mercy. But now do you love the Lord God with all your heart? Is this so? Therefore, say: 'I love you, my God, above all things, and because I love you, I repent of having sinned; for your love's sake, I gladly die; it pleases you, I desire to die, that I may see you and love you forever.'"

270. Then say: "If therefore you love our Lord Jesus, forgive now with all your love those who have offended you in any way; is this not so? Do you also ask forgiveness from those to whom you have done injuries and offenses? Therefore, turn your face to Jesus, who desires to embrace you, and say with all your heart: 'Lord, I am not worthy, but although you acknowledge that you are unworthy of so great a gift, the Lord wishes to come to you. Therefore, call Him again ardently: 'Come, Lord, come, my love, my God, and all things; come to me, for my soul longs for you, and desires nothing else but you.'"

271. After the sick person has received Communion, the priest should assist him in offering thanks: "Therefore, brother, now give thanks to the Lord, who has deigned to come to you and embrace you. The Sacrament is a pledge of future glory. The Lord is with you, what more do you fear?

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Rejoice, brother, for God wishes to give you paradise, and therefore He has deigned to give Himself entirely to you; therefore, say: 'My Lord, my love, I embrace you. I give you thanks, I love you; and I hope to love you forever; I repent of having offended you, and now, whatever remains of my life, I firmly intend to devote to your love.'"

272. "Jesus, my life, I gladly offer my life as a holocaust, if it pleases You to take it from me. May Your will always be done. I pray that You may grant me perseverance and Your love, so that by loving You, I may lose my life, so that I may come to You always to love You in heaven. You will not abandon me, and I will not abandon You; therefore, God of my soul, we will love each other forever."

[*Latin ed. p. 633*]

III. Concerning Extreme Unction. 273. Extreme Unction, as it is the last Sacrament, is, according to St. Thomas, the crown of the spiritual life; by it, the person is strengthened and prepared to enter the heavenly homeland. Therefore, this Sacrament, while the sick person still possesses his senses, ought to be administered, so that it may be more beneficial to him, because, although it cannot be administered unless a grave danger of death (at least probable) is present (as in our Moral Theology, book 6, chapter 714, question 4), it should not be entirely postponed to the very last moment of life (see there, article 4). Therefore, the Roman Catechism states, § 9, that it is a grave sin for pastors to administer Extreme Unction when there is no hope of life and the sick person is already deprived of his senses. 274. The priest should encourage the sick person, explaining that Extreme Unction, if it benefits the soul, also contributes to the healing of the body, as the Council of Trent, session 14, chapter 2, teaches. Sometimes, the healing of the body follows, when it is conducive to the salvation of the soul. However, this healing is not conferred if it is naturally impossible to restore the person to health. John Eroldus recounts that a certain person revealed that if he had received Extreme Unction earlier, he would have immediately recovered from his illness; but because he had delayed, he died, and was condemned to a hundred years in purgatory. Secondly, Extreme Unction remits the remains of sins, and consequently, even hidden mortal sins, as St. Thomas teaches (see there, chapter 734, article). Therefore, the sick person should be instructed that, as the five senses of the body are anointed, he should lament the faults committed through those senses, and should respond with "Amen" to those present. Thirdly, it provides particular helps, by which it breaks the force and violence of the infernal enemy in that final struggle. Therefore, it is very likely that a person who refuses to receive this Sacrament will be greatly burdened with sin, as we have said above, number 407. 275. It is permissible to note some things necessary regarding the administration of this Sacrament. I. It is only speculatively probable that it is sufficient to administer this Sacrament with a single drop of oil,

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without spreading it over the parts of the body; however, this is not the case in practice, because this would not be a true anointing (see in Moral Theology, book 6, chapter 709, question 4). II. According to the more common opinion, the anointing of the five senses is necessary for the Sacrament; therefore, only in times of pestilence, or when there is an imminent danger of death, can a single anointing be given, and only on one sense (more fully explained in the chapter); but always under the condition that the person is conscious, and with the following formula: "May God forgive you whatever you have done wrong through these senses, namely, sight, hearing, taste, smell, and touch, through this holy anointing, and through His most pious mercy." However, if the sick person survives, the anointings should also be repeated, under the same condition, on

[*Latin ed. p. 634*]

I. The five senses are customarily employed in prayers accompanying the Sacrament.

II. It is not necessary for the twofold unction of the Sacrament to be applied to both parts; indeed, it suffices to anoint only one eye, one hand, etc., provided there is a danger of infection, or some other necessity, as when the sick person cannot turn to the other side. The unction of the loins in women, and also in men, when the sick person (as the Ritual directs) cannot be conveniently moved, is omitted. However, the common opinion holds that the unction of the feet is not necessary for the Sacrament; but with regard to this, the custom of the Churches must be observed, lib. 6, n. 710. See.

III. It is also not necessary for the Sacrament that the order be observed in the unction of the parts; nevertheless, he incurs grave guilt who does not observe the accepted order, lib. c. See. Also.

IV. Extreme Unction is lawfully conferred upon children who possess reason, even if they are not yet of the age to receive Holy Communion; however, if there is doubt about the use of reason, it can be administered conditionally. This, however, does not apply to those who are entirely lacking reason, n. 719 and 720.

V. To the insane, the frenetic, and those delirious, if they have, while using their reason, given some sign of understanding, and have requested Extreme Unction, or have given a sign of contrition, and the danger of irreverence is removed, it can be given; and all the more so if they have some lucid interval of reason. However, if there is doubt as to whether anyone has ever used reason, it can be given conditionally. The same applies to the intoxicated, if they are in danger of death, unless it is certain that they were in mortal sin when they lost their senses; for it must be denied to the impenitent, and to those who are dying in manifest sin, as well as to those who are excommunicated, as the Roman Ritual directs, see lib. c. n. 732. It can also be conferred upon women who are in danger of death due to pain

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in the abdomen.

VI. The prescribed prayers, if omitted in a case of necessity, can be said later, if time permits, lib. c. n. 727. And in such a case, the Sacrament can be given, even without the lights, and without the minister, lib. c. n. 728, and also probably without the cope and stole, lib. c. n. 726.

VII. Extreme Unction cannot be repeated in the same infirmity, unless the sick person has previously probably recovered, and has encountered another similar danger to life, as is taught by the Council of Trent, sess. 14, c. 3. See lib. c. n. 715.

VIII. The priest should be careful when moving the sick person, so that he may anoint the parts that are closest; but if he turns him carefully, and the person dies in that position, he does not incur irregularity, because in this case, irregularity cannot occur unless it is due to a fault, from which he who acts for a charitable reason is immune. Finally, the parish priest may lawfully keep the holy oil in his house at night, if he foresees a probable danger, so that if he were called to administer the Unction and was not present, lib. 6, n. 730.

[*Latin ed. p. 635*]

276. When the sick person approaches the hour of death, the priest should, with the customary aids of the Church, assist him as much as possible. 1. He should frequently sprinkle the sick person with holy water, especially if he is agitated by diabolical temptations, saying: "Let God arise, and let His enemies be scattered." 2. He should also anoint him with the oil of the sick, and bless him, saying: "May God, the Father, who created you, bless you; may God, the Son, who redeemed you, bless you; may God, the Holy Spirit, who sanctified you, bless you." 3. He should allow the sick person to frequently kiss an image of the Death of the Savior or of the Blessed Virgin Mary. 4. He should see to it that the sick person obtains all the indulgences he can, and especially that he receives the blessing "in articulo mortis" (at the point of death), as granted by Pope Benedict XIV, with the plenary indulgence mentioned in number 287. 5. He should repeatedly suggest thoughts of sorrow, conformity, hope in the Passion of the Lord, and the intercession of the Blessed Virgin Mary, as well as a desire to see God. However, the priest should allow some intervals, so that the sick person may have time for reflection and rest. 6. He should strive to have the sick person, as often as possible, invoke the names of Jesus and Mary, at least in his heart, if he is unable to speak, and repeatedly say that prayer: "Mary, Mother of Grace, etc." 7. At the time of death, he should arrange for several people to recite the litanies of the Blessed Virgin Mary for the sick person. It will also be beneficial to have the bell of the dying rung to signify to everyone the imminent death of the sick person, so that they may pray for him; this can also be helpful to the healthy. And it should be generally noted that, when the sick person is deprived of his

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senses, prayers are more beneficial to him than words. 8. When the time of death is at hand, the priest, with a mournful voice and kneeling, should recite the customary prayers of the Church: "Go forth in peace, etc.," as found at the end of the Breviary or in the Ritual. 9. While touching the sick person's hands, feet, etc., to see if he is cold, he should be careful not to do this too often, lest it disturb him; and he should not turn him over, but should attend to him in his state of agony, for this could be a sign that he is about to die. 10. When the sick person is near the point of transition, he should give him a blessed candle to hold, so that he may die in faith. 11. While the sick person still has his senses, it will be beneficial to administer absolution to him several times after a brief reconciliation, so that he may be more secure in the state of grace, if perhaps his previous confessions were invalid, or at least so that he may receive an increase in grace, and so that the pains of purgatory may be lessened for him. And if, at that time, the sick person should fall into a mortal sin, he should not be alarmed, but, warning him to invoke the names of Jesus and Mary, if he is tempted again, he should comfort him kindly, and he should strive to elicit an act of contrition, and then absolve him immediately. However, if the sick person is already without his senses, and shows no sign of sorrow or desire for absolution, it is not advisable to administer absolution to him again on the same day; for then, although it may be given conditionally, nevertheless...

[*Latin ed. p. 636*]

In order that the Sacrament may be validly administered, a pressing and grave reason is required; hence, it is necessary that some notable interval of time intervene. However, the priest must be guided by his conscience, as he knows. For if he has been accustomed to wicked thoughts, if he is dying from some wound, or if he is ensnared by some hatred or impure love, if the infirmity is exceedingly severe, and he himself does not willingly endure it, then absolution can more often be granted; but if not, it suffices that an interval of three or four hours pass: more frequently, however, if he is already near death. It is also advisable to instruct the sick person, while he still has his senses, to give some definite sign, if he cannot speak, when he seeks absolution, or when the priest wishes to administer it to him, for example, by closing his eyes, or nodding, or raising his hand, or bowing his head, and the like.

277. Finally, when it appears that he has already passed from this life, the priest must take care not to immediately declare the fact of his death, nor to immediately close his eyes, or mouth, or cover his face with cloths; for if he were not yet dead, it could happen that death would be hastened. But when he certainly knows that the soul has already departed to eternity, he should urge those present to pray for him, and he himself, kneeling, should say the prayer: "Subvenite, etc.," as in the Rituale, or in the Breviary.

§ VI. Affects that can be suggested during the time of agony and expira-

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tion.

278. In You, O my God, I believe in the infallible truth; in You, I hope in boundless mercy; I love You, infinite goodness. In You, O Lord, I have hoped, and I shall not be confounded forever. What is there in heaven for me, and what do I desire on earth but You? O God of my heart, and my portion forever. I shall die of love for Your love, which loved me so much as to deign to die for me. In peace I shall sleep and rest in You. My God, do not permit me to be separated from You. I desire nothing but You. O infinite goodness, I love You, I love You, I love You. (It should be noted that the acts that should be frequently suggested to the dying are those of love and sorrow.)

Jesus, my Jesus, who will soon judge me, have mercy on me before You judge. I love You, and because I love You, I repent of having offended You. Jesus, my sweetest Jesus, do not permit me to be separated from You. The Blood of Jesus, wash me. The Passion of Christ, save me. Into Your hands, O Lord, I commend my spirit. I shall die, O Lord, that I may see You. Mary, Mother of God, pray to Jesus for me. Turn Your merciful eyes to us, and after this exile, show us Jesus, the blessed fruit of Your womb.

[*Latin ed. p. 637*]

O Mary, now is the time to help your servant. My Mother, do not forsake me. O Paradise, O beautiful homeland, O homeland of love, when shall I see you? My God, when shall I love you face to face? When shall I, Jesus my Lord, no longer be afraid of losing you? My God, and all. I am content to lose everything, in order to gain you, my God. My God, out of love for Jesus, have mercy on me. Send me, Lord, into the fire of Purgatory, for as long as you will; but do not send me to Hell, where I cannot love you. Therefore, we beseech you, help your servants, whom you have redeemed with your precious Blood. Eternal God, I hope and desire to love you eternally. My love is crucified. Jesus my love, my love has died for me. O God, come to my assistance: Lord, make haste to help me. Eternal Father, for the love of Jesus Christ, grant me your grace. I love you, I repent. How can I repay you, my God, for so many and such great benefits that you have conferred upon me? I hope to give you thanks eternally in Heaven. Mary, Mother of Grace, Mother of Mercy, etc. Have mercy on me, O God, according to your great mercy, etc. I will sing the mercies of the Lord forever. Already, I am very ill and near to expiring. 279. Into your hands, O Lord, I commend my spirit. Jesus my Lord, I commend my soul to you, which you have redeemed with your blood. (It should be noted that, when a person is very ill and near to breathing his last, acts of devotion should be made without pause, and with a stronger voice.) Lord Jesus Christ, receive my spirit. My God, help me; without me, to come to love you eternally. Jesus my love, I love you, I repent. Oh, that I had never offended you! O Mary, my hope, help me, pray for me to Jesus. Jesus my Lord, through your Passion, save me.

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I love you. Mary, my Mother, help me in this hour. St. Joseph, help me, Archangel Michael, defend me. Guardian Angel, keep me, St. N. (Here, especially, mention should be made of the protector of the sick) commend me to Jesus Christ. You Saints and You Holy Women of God, intercede for me. Jesus, Jesus, Jesus. Jesus and Mary, I give you my heart and soul.

[*Latin ed. p. 638*]

§. VII. Signs of Impending Death. 280. It is necessary that the priest, who performs this work of charity, should know the signs of impending death, so that he may better assist the sick person who is about to expire. There are three principal and universal signs. 1. A pulse that is weak, intermittent, and throbbing. 2. Anxious breathing. 3. Eyes that are sunken and glazed, or wider than usual, or excessively bright, or that perceive objects differently than they appear to others, as when the upper eyelid relaxes and passes over the lower one. 281. There are also signs of imminent death, such as a sharpened and paling nose, and if the nostrils blow as if with a bellows; trembling hands; livid nails; a yellowish, bluish, and altered complexion; a foul-smelling and cold breath; an immobile body; cold sweat on the forehead; excessive heat in the region of the heart; the appearance of down or lanugo; and coldness in all extremities. 283. However, signs that are even closer to expiration are intermittent or weak breathing; a failing pulse; the clenching of the teeth, a grinding sound; a distillation in the mouth, a slight sigh, or groans; tears flowing spontaneously; a twisting of the mouth, eyes, and body. 283. Note that those suffering from dropsy, fever, or wounds, asthma, pleurisy, bleeding, vomiting, angina, and rheumatism, sometimes expire with only a few of the aforementioned signs, and with a strong pulse, and while still speaking. Note also that those who are near death, while suffering from pleurisy, are often recognized by the difficulty of breathing, the increasing shortness of breath, and bluish lips. Those who have been wounded sometimes die with a sudden collapse. Those suffering from dropsy are near death when the pulse weakens, and the shortness of breath increases, and foam appears in the mouth. Those who suffer from intermittent fever often die at the beginning of an attack, when the convulsions are violent. Note that in some sick people, the breath is so weak, and the agitation of the heart so great, that they appear to be dead, and yet they are not. More certain signs of death are the coldness of all parts of the body, even in the region of the heart; the heaviness of the body; the fact that a stimulus applied to the nostrils is not felt by the person; and the fact that the breath does not stir a mirror held to the mouth, and similar things. Finally, note that sometimes the signs mentioned above may be misleading, and that a sick person may die suddenly even without them; therefore, while the sick person is still suffering, the priest must never abandon him. §. VIII. and finally. Prayers, Christian acts, and blessings. 284. When the priest enters the house of the sick person, he should say: 1. Peace

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to this house. 2. And to all who dwell in it.

[*Latin ed. p. 639*]

He shall sprinkle him with water blessed, saying: "Thou shalt sprinkle me with hyssop, and I shall be cleansed: thou shalt wash me, and I shall be made whiter than snow." Then he may recite the prayers which are found in the Rituale for Extreme Unction. Afterwards, he shall take the image of the Redeemer, saying: "Behold the Cross of the Lord, flee, ye adverse powers." And he shall offer the image to the sick person to kiss, saying: "Kiss the feet of Jesus Christ, who for your salvation died upon this cross." 285. Then he shall say: "Therefore, N. N., place your hope in God; we hope that Mary, by the grace of God, will intercede for your salvation; however, your infirmity is grave, conform your will to the will of God, that He may do with you what He wishes. Therefore, recite with me the acts of a Christian, so that you may be prepared to die with them, if God has so determined for the good of your soul; say them with me." 286. Acts of Faith. My God, infallible truth, because You have revealed to the Holy Church what I ought to believe, I believe what the Church proposes to me. I believe that You are my God, Creator of all things, who for all eternity have filled paradise with the just, and punish sinners in hell. I believe in the mystery of the Holy Trinity, that is, the Father, the Son, and the Holy Spirit, three persons, but one God. I believe in the second person, that is, the Son of God, who became man in the womb of Mary, ever-virgin, and who died for us sinners. He rose again, and now sits at the right hand of the Father; and He will come again to judge the living and the dead. I believe in the seven Holy Sacraments, and especially in Baptism, Penance, the Eucharist, and Extreme Unction. I believe that all must rise again with their bodies; and finally, I believe all that the Holy Roman Catholic Church believes, in which alone I believe there is true faith. Acts of Hope. My God, trusting in Your promises, because You are faithful, powerful, and merciful, through the merits of Jesus Christ, I hope for forgiveness of sins, for final perseverance, and for the glory of paradise. Acts of Love and Sorrow. My God, because You are infinite goodness, worthy of infinite love, I love You with all my heart above all things. And I am deeply sorry for all my sins, because I have offended Your infinite goodness, and I detest them with all my soul. I propose to rather die than sin, with Your grace, which I ask You to grant me now and always. And I propose to receive the Holy Sacraments in life, and in death. (Benedict XIII granted an indulgence of seven years to all those who recite these acts once a day; and if they are performed for an entire month, after confession and Communion, according to the intention of the Pontiff, a greater indulgence is granted, even for the souls of the departed; and if anyone performs them at the end of life, an indulgence at the hour

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of death is granted.)

[*Latin ed. p. 640*]

Blessing at the point of death. 287. POPE Benedict XIV, in the year 1747, granted bishops, and their delegates, the faculty of granting a plenary indulgence to the sick who request it, after they have received the sacraments of Penance, the Eucharist, and Extreme Unction, or if they have reasonably requested them, or if they have given some sign of suffering, and afterwards have lost their senses. However, this is not to be given to excommunicated persons, or to the impenitent, nor even to those who are dying in manifest sin. It must be noted, however, that the aforementioned faculty must be obtained from the bishop by any priest for the time being; for in the bull "Pia Mater," issued by Benedict XIV on April 5, 1747, it is stated as follows: "When new bishops are appointed to the Catholic flocks, we wish, and we decree, that each of them, upon requesting this faculty from Us, or from the Roman Pontiff for the time being, shall receive apostolic Letters, etc." The manner in which the blessing is given is as follows. 288. The priest, entering the sick person's house, says: "Peace to this house, and to all who dwell in it." And he sprinkles with holy water, saying: "Thou shalt sprinkle me with hyssop, and I shall be cleansed: thou shalt wash me, and I shall be made whiter than snow." Afterwards, he says: "Have mercy on us, O God, according to thy great mercy." Glory to the Father, etc. And saying nothing else, he repeats the antiphon: "Thou shalt sprinkle me, etc." If the sick person requests confession, the priest should hear it kindly; but if the sick person does not express contrition, the priest should strive to elicit it from the sick person, and encourage him to hope for the glory of paradise: he should urge him to offer himself entirely to God, and to accept whatever God wills, even death itself; then he says: 289. † "Help us in the name of the Lord." "Who made heaven and earth." Antiphon: "Remember not, O Lord, the sins of thy servant (or thy handmaid), nor take vengeance for her sins." "Kyrie eleison." "Christe eleison." "Kyrie eleison." "Our Father, etc." "† And do not lead us, etc." "But deliver us, etc." "† Save thy servant (or thy handmaid), O Lord." "O my God, in thee do I hope." "† O Lord, hear; and the prayer of thy servant, etc." "And my cry, etc." "† The Lord be with you." "And with thy spirit."

[*Latin ed. p. 641*]

LET US PRAY. Most merciful God, Father of mercies, and God of all consolation, who will not suffer anyone who believes and hopes in You to perish, deign to look favorably upon Your servant N., whom true faith and Christian hope commend to You. Visit him in Your mercy, and through the passion and death of Your Only Begotten Son, grant him, with clemency, forgiveness and remission for all his sins, that his soul, at the hour of his death, may find You, the Judge, propitious, and may, cleansed in the blood

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of the same Son, deserve to pass over to everlasting life. Through Him, etc. Then, after the priest has said, "I confess to God," etc., the priest says: "May mercy, etc." "May he grant you, etc."; then: "Our Lord Jesus Christ, the Son of the living God, who gave to His apostle Peter the power to bind and to loose, may, through His most pious mercy, receive your confession, and may restore to you the white garment which you received in baptism, and I, by the authority granted to me by the Apostolic See, grant you a plenary indulgence and remission of all sins. In the name of the Father, etc." "May Almighty God remit to you through the sacred mysteries of penance all the penalties of this life and of the future, may He open the gates of paradise, and may He lead you to eternal joys. Amen. May Almighty God bless you, † Father, Son, and Holy Spirit. Amen. But if the person were so close to death that there was no time for the aforementioned prayers, the priest should immediately impart to him the aforementioned blessing. "Our Lord Jesus Christ, etc."

290. Blessing of the Scapular of the Blessed Virgin Mary of Mount Carmel (Wechte). The priest, turned towards the habit, says: †. "Show us, O Lord, Your mercy. And grant us Your salvation." †. "O Lord God of hosts, turn us. And show Your face, and we shall be saved." †. "O Lord, hear my prayer. And let my cry come to You." †. "The Lord be with you. And with your spirit." (1) This scapular belongs to the Order of Carmelites and consists of a piece of brown cloth.

[*Latin ed. p. 642*]

LET US PRAY. O God, protector of all the faithful and Savior of the human race, sanctify with your right hand this habit, which your servant is about to wear, out of love and devotion for you and for your most holy Virgin Mother Mary of Mount Carmel †: and may that which is signified through this mystical garment be always preserved in his body and soul, and may he be most happily led to the reward of eternal life with all the saints. Who live and reign world without end. Amen. Then, he sprinkles the blessed water over the habit, and afterward places it upon the person receiving it, saying: Receive, devout man, this blessed habit, and pray that the most holy Virgin may, through its merits, keep you without stain, and may defend you from all adversity, and lead you to eternal life. Amen. Then he says: I, by the authority given and granted to me, receive and admit you to participate in all the prayers, disciplines, devotions, intercessions, almsgiving, fasts, vigils, Masses, canonical hours, and other spiritual good works, which are commonly performed, day and night (with the cooperation of the mercy of Jesus Christ) by the religious. In the name of the Father, and of the Son, and of the Holy Spirit. May the Creator of heaven and earth, Almighty God, bless you, who has deigned to choose you for the society and confraternity of the blessed Virgin Mary of Mount Carmel, and we pray that, in the hour of death, he may crush the head of the serpent who

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is there as an adversary, and that you may, finally, as a traveler, obtain the palm and the eternal crown of inheritance. Through Christ our Lord. Amen. The recipient is sprinkled with blessed water. 291. Blessing of the Scapular of Saint Mary of the Seven Sorrows (4). †. Help us, etc. ‡. Who made heaven and earth, etc. (1) This scapular belongs to the Order of the Servants of the B.V.M. and consists of a piece of black cloth.

[*Latin ed. p. 643*]

LET US PRAY. O Jesus Christ, who have deigned to clothe us with the covering of our mortality, we beseech the immense abundance of your generosity, that you would deign to bless this kind of garment, which the holy Fathers instituted to be worn in memory of the seven sorrows of the Blessed Virgin Mary, so that whoever is clothed in it may, both in body and in soul, be clothed in your Savior. Who lives and reigns world without end. Amen. Afterwards, the priest shall place the blessed Scapular upon the one receiving it, saying: Receive, most beloved brother, the habit of the Blessed Virgin Mary, a singular sign of her servants, in memory of the seven sorrows which she bore in life and in death for her only-begotten Son, that thus clothed, you may live perpetually under her patronage. May the blessing of God Almighty, of the Father, and the Son, and the Holy Spirit, descend upon you, and remain always. May the Passion of our Lord Jesus Christ, and the compassion of the Blessed Virgin Mary, be in our heart and in our body. Amen. 292. The Blessing of the Scapular of the Immaculate Conception of the Mother of God (1). †. Help us in the name of the Lord. ‡. Who made heaven and earth. †. The Lord be with you. ‡. And with your spirit. LET US PRAY. O Jesus Christ, who have deigned to clothe us with the covering of our mortality, we humbly implore the clemency of your generosity, that you would deign to bless this kind of garment, which, for the reformation of the wicked manners of men, was instituted in honor and in memory of the immaculate conception of the Blessed Virgin Mary (and, as one clothed in it, may pray). That this your servant, who has been clothed in it, may, through the intercession of the same Blessed Virgin Mary, also merit to be clothed in you. Who lives and reigns, etc. (1) This Scapular belongs to the order of regular clerics (commonly called Theatines) and is made of blue cloth.

[*Latin ed. p. 644*]

Afterwards, the priest, having sprinkled the scapular with blessed water, shall place it upon the recipient, saying: "Receive, brother, this scapular of the blessed Virgin Mary, immaculate, that, through her intercession, the old man, cleansed from all impurity, may carry it without stain, and may attain to everlasting life. Amen. And I, by the authority given to me, receive you into participation of the spiritual benefits which are wrought in our Congregation by the grace of God, and which have been granted by the

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privilege of the Holy Apostolic See. In the name of the Father, and of the Son, and of the Holy Spirit. Amen. If a sick person has never received any scapular, or any of those things of which we have spoken above, the priest who has the authority shall take care that the sick person may receive them at that time, so that he may gain indulgences. END OF VOLUME FIFTH."

[*Latin ed. p. 645*]

INDEX OF CHAPTERS AND DOUBTS, WHICH ARE ATTACHED TO ALL SUMMARIES, so that all matters and questions contained in the fifth volume may be kept before the eyes simultaneously with each chapter and doubt. The letter 4 denotes the book, n the marginal number, and v the verse.

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alone"?

843 Is it sufficient to say: "I will marry, if the Pope grants a dispensation"? Does the exchange of rings and gifts suffice? What if the parents are deceitful?

844 Q. I. Are betrothals contracted through grave fear null and void?

Q. II. What if they are contracted through slight fear?

Q. III. Is the person who entered into a betrothal through slight fear obligated to fulfill it?

DOUBT II. What is the nature and extent of the obligation of betrothal? page 12

845 Betrothals impose a grave obligation. But do they obligate one to immediately enter into marriage?

846 Can a judge compel unwilling parties to marry, and should he do so?

847 Is fornication on the part of the betrothed, or the betrothed with another, of a different nature? A person who falsely promises marriage is not bound to marry, unless they have obtained sexual intercourse from a virgin.

848 If someone has entered into betrothals with two people, and then has intercourse with the second, which one must they marry?

849 Concerning children entering into marriage without the knowledge of their parents. Are such marriages valid?

Q. I. In what way, and to what extent, do children sin when marrying without the knowledge or consent of their parents? What if betrothals have been sworn? What if the betrothed has deflowered a virgin after those betrothals? Are prelates obligated to prevent such marriages? From what reasons can children be excused for entering into marriage without the consent of their parents?

850 Q. II. Is a son obligated to obey his father who commands him to marry?

854 Q. III. Does a notable disparity of condition or status between the contracting parties invalidate betrothals?

852 The one who breaks off the betrothal loses the dowry, etc.

Note I. What if a woman promises something to a man, so that he will marry her, and what if the reverse?

853 Note II. Concerning the penalty imposed on the one who breaks off the betrothal.

Q. I. Is it permissible to impose a penalty on the one who unjustly breaks off the betrothal?

Q. II. Is the one who justly breaks off the betrothal obligated to pay the promised penalty, even if it involves theft?

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Q. III. After paying the penalty, is the one who breaks off the betrothal obligated to return it?

Q. IV. What if a legacy is left to a girl, so that she may marry someone, and she marries someone else?

Q. V. What if a legacy is left so that she may not marry, and she marries?

854 Are kisses and embraces permitted between betrothed?

[*Latin ed. p. 647*]

III. Question: How are betrothals dissolved? page 31

855 Betrothals are dissolved: I. By marriage to another. II. By the consent of the parents, when both parties are of age. What if the betrothals have been sworn?

856 How are betrothals dissolved when the parties are underage? What if they themselves have sworn to the marriage?

857 III. By a hindering impediment that arises.

Question 4: Are betrothals then dissolved even on the part of the one who is at fault?

Question II: Is the one at fault obligated to seek a dispensation?

Question III: Can a contract of betrothal, made with an impediment and subject to the condition of a dispensation, be valid once the dispensation is obtained?

860 IV. By the crime of one of the parties.

861 Are betrothals dissolved by the fornication of either of the betrothed?

Question 1: What if the bride has been compelled by force?

Question II: What if both betrothed commit fornication?

862

863 V. By a notable change, namely: 1. If hatred, etc., are feared. 2. If a harmful defect arises. 3. If poverty arises.

864 Is it permissible to enter into betrothal with a hidden, harmful defect?

865 Is it permissible with a non-harmful defect? And what if the bride is asked if she is a virgin?

866 VI. By the departure of one party to a distant place. What if the departure is to a nearby place, with the intention of remaining there?

867 VII. By the lapse of a fixed time.

Question 4: What if it is doubtful whether a term was assigned to end the obligation?

Question 2: What if one party is justly impeded?

Question III: After the term has elapsed, is the innocent party also released?

868

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869 VIII. By the acceptance of holy orders, and entrance into religion.

870 IX. By a vow of chastity.

These matters are discussed more distinctly, and 1. concerning religious profession.

Question 4: Are betrothals dissolved by entering into religion before profession?

Question II: If the betrothals have been sworn, is the betrothed obligated to enter into marriage before entering religion?

874 II. Concerning the acceptance of orders.

Question 1: Does the betrothed sin by accepting holy orders against the will of the bride?

872 Question 2: Are betrothals dissolved by the acceptance of minor orders?

873 III. Concerning the vow of entering religion, of accepting holy orders, or of maintaining chastity.

Question 1: Are betrothals dissolved by a vow of chastity, or by accepting holy orders, even on the part of the one who makes the vow?

874 Question II: What if, after the vow, the betrothed commits a coitus against his will?

[*Latin ed. p. 648*]

875 X. Again, the dissolution of betrothal through a valid marriage with another is discussed, and it is asked whether, through this, the betrothal is also dissolved even if the spouse dies.

876 XI. Whether a newly acquired inheritance dissolves the betrothal. And what if a notably better marriage is offered?

877 Whether disagreement between parents is a cause for dissolving the betrothal.

878 Question I. Is the authority of a judge always required to dissolve a betrothal?

Question II. What proof is sufficient in internal matters, and what is sufficient in external matters?

CHAPTER II. ON MARRIAGE ITSELF.

Question I. What is marriage, what is its matter, its form, and its minister? page 52

879 What is marriage? And in what does its essence consist?

880 What is the matter of the sacrament of marriage?

884 For what purpose is it licit to marry?

882 Three purposes are distinguished.

Question 1. Is it licit to marry principally for the remedy of concupis-

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cence?

883 Question II. For external purposes?

884 How do the contracting parties sin mortally?

885 What is required to contract marriage through a procurator?

886 What if the one who gave the mandate, without the intention of contracting, ratifies the mandate before the marriage is contracted?

887 What kind of consent is sufficient to contract marriage? What if someone contracts *de facto*? Are words necessary for validity?

888 Are words necessary *de præcepto*?

889 Is the giving of a ring, or the transfer of the bride, sufficient to contract marriage?

890 Is a conditional consent sufficient to contract marriage?

894 What if the condition is necessary, or scandalous, or contrary to the essence of marriage?

892 What if a condition is added, "if the father consents"?

Question I. What if the father is silent?

893 Question II. What if the father first dissents, and then consents?

894 Question III. What if, at the time of the condition, the father was dead?

895 After the condition is fulfilled, is a new consent required?

896 In what does a condition differ from a demonstration, a cause, a manner, and a day?

DISCUSSION: on the minister and form of marriage.

[*Latin ed. p. 649*]

698. The objections are resolved. 899. Conclusions drawn from our opinion. DOUBT II. CONCERNING THE USE OF MARRIAGE. ARTICLE I. Whether the use of marriage, or the conjugal act, is licit. page 73. 900. The conjugal act is illicit: I. If the marriage is null. II. If the marriage is doubtful. 904. Question I. Is it permissible to contract marriage when there is doubt about an impediment? 902. Question II. Is it permissible when there is a probable opinion of the impediment's non-existence? Question III. Is it permissible when there is a probable opinion of the fact's probability? 903. Question IV. Is it permissible to seek and grant [annulment] when there is doubt about the validity of a marriage already contracted? And, specifically, is a wife not certain of the death of her first husband obligated to give herself to a second? 904. Doubt I. If a marriage is contracted in good faith, and a doubt subsequently arises, is it permissible to seek [annulment] after due diligence? 905. Doubt II. What if there is only a probable opinion of the marriage's nullity? 906. Doubt III. If a marriage is begun with doubtful faith, can the one who doubts seek [annulment] after due diligence? 907. Doubt IV. In a positive doubt, should judgment be rendered in favor of the

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marriage contracted? 908. Is a spouse obligated to believe what the other spouse asserts, namely, that they have fictitiously consented? What if they hear of an impediment from witnesses not worthy of belief? What if they hear it from one witness worthy of belief? 909. III. The union is illicit if it is done with danger to health. Doubt I. Is it permissible to seek [annulment] if one of the spouses suffers from leprosy, syphilis, or a similar disease? 910. Is it permissible to seek [annulment] after bathing, or after venisection, or when suffering from a fever? Or, immediately after dinner? 941. Doubt II. During the time of lactation? 912. IV. If it is done for the sake of pleasure. 903. V. If it is done with an adulterous mind. What if a spouse is excited by the beauty of another person in order to arouse themselves? 914. What if they are excited by the union of others? 945. VI. If it is done in an improper manner. 946. Question I. Is it mortal to begin the union in a preposterous manner? 947. Question II. Is it permissible in a natural position?

[*Latin ed. p. 650*]

918 Q. III. Whether it is permissible to abstain from marital relations after having begun coitus. 919 Whether, however, a wife, if her husband abstains from coitus after having had relations, may herself immediately take steps to excite herself for further coitus. 920 VII. If it occurs in an improper place. (Referring to the law, section 4, number 458.) 924 VIII. If it occurs at an improper time. 922 Q. I. Whether it is permissible for a married couple to have relations on the day of Communion. (Referring to numbers 273 and 274, section VI.) 923 Q. II. Whether it is permissible on festive days. 924 Q. III. Whether it is permissible during pregnancy. Whether, however, if the danger of abortion is absent, a coitus during pregnancy is venial. 925 Q. IV. Whether it is permissible to have relations during menstruation. 926 Q. V. Whether it is permissible during the period of purification after childbirth. 927 It is permissible to use marital arts, I. For the purpose of procreation; II. To avoid incontinence; III. For other honest purposes. 928 Q. I. Whether a husband is ever obligated to seek relations. 929 Q. II. Whether a wife is ever obligated. 930 Q. III. Whether a spouse who is forbidden from seeking relations due to a vow or a contract, may ever seek relations. 934 Q. IV. Whether it is permissible to seek relations from an excommunicated person, and whether it is permissible for an excommunicated person to seek relations. 932 Whether and when are improper touches, glances, and words permissible between spouses. 933 Q. I. Whether improper touches and glances are mortal sins between spouses, provided there is no danger of pollution. 934 Q. II. What if the danger of pollution is foreseen? 935 Certain touches are enormously improper. 936 Q. III. Whether a spouse sins gravely by improperly touching the other when the other is absent. 937 Q. IV. Whether, if one is delighted by the thought of coitus had or to be had.

ARTICLE II. Whether the marital act is a precept and a duty. page 106

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938 Spouses are bound by themselves to give, and sometimes also to seek. 939 They are also bound to cohabitation, unless there is a just and sufficient reason for the contrary. Doubt I. Can a husband expel his wife because of a vow not fulfilled? Doubt II. Is the other bound to her if the dowry is not paid? Doubt III. If she commits adultery. 940 Concerning the obligation to fulfill the duty. Q. I. Whether it is a mortal sin to refuse the duty once or twice. What if one remembers it, or if prices forbid it? What if it is demanded immoderately? What if one delays fulfilling it for a short time?

[*Latin ed. p. 651*]

964. Question II. Whether the multiplicity of children can be a just cause for refusing to use contraception.

942. It is sinful for a spouse to declare oneself impotent.

943. Question I. Is a spouse obligated to grant another illicitly requested marital relations?

944. Doubt I. What if the fault lies with the one requesting, namely, if that person has an impure intention, etc.?

945. Doubt II. What if the one requesting is excessively lustful?

946. Question II. Is a spouse obligated to grant marital relations to the one requesting, even if the fault is only a venial sin?

947. Question III. Is it permissible to grant, or to request, marital relations even if the other party is willing to abstain from intercourse after copulation?

948. Is a spouse obligated, and can he grant, marital relations if he has mutually vowed continence with the other? What if the other is mad, or drunk?

949. An incestuous person, and one who has vowed continence, cannot request marital relations, but is obligated to grant them.

950. A spouse is not obligated to grant marital relations if it would cause a grave harm to himself, or to the offspring. Is he obligated to grant them to someone suffering from a contagious disease? What if the harm is slight, and the other person is a leper? What if the harm is grave? Can he then grant them? From what causes can a spouse grant marital relations even if it involves a grave danger to his health?

954. Can a spouse grant marital relations if it involves a danger to the offspring?

952. Is a wife obligated to grant marital relations if she is suffering from a fever, or during her menstrual period, or during pregnancy, or if the other party requests an unnatural act?

953. What if a wife has experienced a danger of death during childbirth, or if she has given birth to stillborn children?

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954. Is it ever permissible to prevent procreation? When does a wife sin by rising, or urinating, immediately after copulation?

Doubt I. Can a girl who has been violated immediately expel the semen?

Doubt II. Is it permissible for elderly people, or the infirm, who are often unable to procreate, to have marital relations?

Doubt III. Can, and under what circumstances, can a divorce be granted? page 121

955. A divorce is granted in the following cases:

I. If there are sufficient indications of the death of a spouse.

II. If the other spouse converts to the faith.

III. If a marriage is consummated under duress.

IV. If the Pope grants a dispensation in a valid marriage.

956. Concerning the indissolubility of marriage.

957. If an unfaithful spouse refuses to convert, is it permissible for the faithful spouse to enter into another marriage?

958. Among the faithful, a valid marriage is only dissolved by a religious profession.

959. Is it also dissolved by a dispensation from the Pope?

[*Latin ed. p. 652*]

960 Divorces are permitted in certain cases, namely, I. on account of the adultery of a spouse.

961 Question I. Whether suspicion of adultery is sufficient for divorce.

962 Question II. Whether it is permissible to divorce on account of sodomy or bestiality committed by a spouse.

963 Question III. Whether divorce is permissible on account of carnal intercourse without procreation.

964 Question IV. Whether a husband, knowing of his wife's adultery, is obligated to abandon her.

965 Question V. Whether a wife is obligated to separate from her adulterous husband. And whether an innocent spouse is obligated to receive back the adulterous spouse who has repented.

966 Question VI. In which cases may a spouse not separate from an adulterous spouse? I. If both are guilty of adultery. II. If a spouse consents to the adultery of the other. III. If the adultery occurs without fault. IV. If the offense is forgiven.

967 Doubt I. Whether, after a divorce decreed by a judge, an innocent spouse can revoke the divorce and bring the adulterous spouse back.

968 Doubt II. What if, after a divorce, the innocent spouse also commits adultery?

969 Doubt III. Whether a husband can divorce his adulterous wife by his

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own authority.

970 After a legal separation, a husband can enter religion or become a priest, against the will of his adulterous wife; but the adulterous wife cannot do so without the consent of the other.

971 Divorce is permitted II. on account of the other spouse's barrenness.

972 Question I. Whether, for this reason, a spouse can separate by his own authority. Question II. Whether he can become a religious, against the will of the other. Question III. What degree of barrenness is sufficient to justify divorce.

973 Question IV. Whether blows alone are a just cause for divorce.

974 Divorce is permitted III. to a spouse if the other draws him into sin.

975 Divorce is permitted IV. indeed, sometimes it is even commanded on account of the other spouse's heresy.

976 Divorce is permitted V. by mutual consent.

977 After a divorce, with whom are the children to be raised? And at whose expense?

978 Whether a wife is obligated to follow her husband to a place of cohabitation.

CHAPTER III. Of impediments to marriage. page 439

979 Some impediments are prohibiting, others are dispelling.

[*Latin ed. p. 653*]

979 The Church can establish impediments that dissolve marriages.

980 Who can establish such impediments?

Doubt 1. Can Bishops?

984 Doubt 2. Do impediments established by the Church bind non-Catholics?

Doubt 1. What are impediments that merely impede, but do not render marriage illicit? page 439

982 What render marriage illicit?

I. Ecclesiastical prohibition, namely, the prohibition of a Bishop, etc.

983 II. The time of feasts, during which solemnities, blessings, etc., are prohibited.

984 Doubt 1. Is it permissible to consummate marriage then?

Doubt 2. Is it permissible to consummate marriage before the blessing?

985 III. Catechism.

IV. Crime, namely, incest, rape, bigamy, etc.

V. Betrothal.

986 VI. A vow of chastity, or of religious life.

Doubt 1. Can a Bishop dispense with a vow of chastity made after mar-

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riage?

987 Doubt 2. Can he dispense with a vow of chastity made before marriage, in order to seek a dispensation for marriage? Can mendicant orders do this?

Doubt 3. Can a Bishop, even for contracting marriage?

988 These also impede marriage:

I. Secrecy.

II. Omission of the blessing.

III. Omission of announcements.

989 Doubt 1. Does a parish priest gravely sin by omitting these, if he knows from elsewhere that there is no impediment? And what is said about the obligation of announcements before marriage, is the same said after it? What if only one announcement is omitted?

994 Doubt 2. Must the announcements be made in the Church, and at Mass?

Doubt 3. In which parish must they be made?

992 Doubt 4. On which festive days? And can they ever be made on weekdays?

993 When must they be repeated?

994 Concerning the obligation of announcing impediments.

995 Doubt 1. Is one obligated to announce an impediment that one cannot prove?

996 Doubt 2. Does one witness of an impediment prevent marriage?

997 What is required for such a witness to prevent marriage?

998 Doubt 3. Is one witness sufficient, if betrothal has been sworn?

999 Does notoriety impede marriage? What if a judge has private knowledge of the notoriety, or of the impediment itself?

1000 Is the contracting party obligated to confess the impediment?

4001 What should a parish priest do when he knows of an impediment?

4002 Doubt 1. Is a parish priest obligated to prevent marriage, if he himself...

[*Latin ed. p. 654*]

Only He knows the impediment. Doubt 2. What if the Ordinary alone is aware of the impediment? 4003 Who can grant a dispensation in cases of impediment? 4004 Can the Bishop, and for what reason? 4005 Reasons for which the Bishop is obligated to grant a dispensation. 4006 Reasons for which he is not obligated, but may grant a dispensation. 4007 Doubt 4. Can the Vicar General grant a dispensation? Doubt 2. Can a parish priest ever grant a dispensation, or at least declare it? DOUBT II. What are the impediments that dissolve marriage? page 456 4008 The impediments that

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dissolve marriage are fifteen, namely: I. Error, II. Condition, III. Vow, IV. Consanguinity, V. Crime, VI. Disparity of cult, VII. Force, VIII. Order, IX. Bond, X. Dishonor, XI. Age, XII. Affinity, XIII. If the woman is clandestine, XIV. and imposed, XV. or has been taken away, and has not been restored to her rightful state. 4009 I. Error of person. 4040 Concerning error regarding the person. 4041 Concerning error regarding the qualities of the person. 4042 Does an error regarding a quality invalidate the marriage, if it was the cause of the contract? 4043 There are three rules for determining when an error regarding a quality amounts to a substantial defect. 4044 The first is, if someone actually enters into a marriage under a condition of quality. 4045 The second is, if the quality is proper to a particular person. 4046 The third is, if the consent is given directly regarding the quality. 4017 II. Condition, namely, of servitude. More points to be noted up to n. 4023. 4024 III. Solemn vow. 4025 Doubt 1. Does this dissolve marriage by divine or ecclesiastical law? 4026 Doubt 2. Can the Pope grant a dispensation in a solemn vow? 4027 IV. Consanguinity. And 4. Concerning legal consanguinity. 4028 2. Concerning spiritual consanguinity. 4029 3. Concerning carnal consanguinity, and concerning the rules for distinguishing the degrees. 4030 The tree of consanguinity. 4031 V. Crime. First, Homicide. Second, Adultery. 4032 Third, Abduction. 4033 The following rule is assigned: I. If both parents are deceased, namely, if only homicide is present. 4034 Is it required that the intention of marriage be manifested to the other party? 4035 II. If one parent is deceased, namely, if homicide and adultery are present. 4036 Requirements for incurring this impediment.

[*Latin ed. p. 655*]

1037 III. Another impediment exists, namely, if adultery is present without homicide. Requirements for this impediment.

1038 Doubt 1. Does the silence of the adulteress suffice for consent?

1039 Doubt 2. Does a false promise create an impediment?

1040 Doubt 3. Does a conditional promise create an impediment?

1041 Doubt 4. Is it required, in order to incur the impediment, that the promise be mutual?

1042 An impediment also arises from adultery committed with an attempted marriage, while the spouse is living.

1043 He sins who, while a spouse is living, promises marriage to another.

1044 VI. Disparity of cult. What about marriage with heretics?

1045 VII. Force, or grave fear, unjustly inflicted to extort marriage.

1046 In what way does force differ from fear? And what is fear from within, and fear from without?

1047 What is required for grave fear?

1048 What evils constitute grave fear?

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1049 What is required, in order that fear may invalidate a marriage?

1050 Doubt 1. What if a judge unjustly condemns someone, and promises freedom if he takes his daughter?

1051 Doubt 2. What if the accused is justly condemned?

1052 Doubt 3. What if someone is innocent, but is justly condemned according to the allegation?

1053 Doubt 4. What if a doctor refuses to treat, unless he takes his daughter?

1054 Doubt 5. Does fear invalidate marriage by natural law, or by ecclesiastical law?

1055 Doubt 6. Does light fear invalidate?

1056 Doubt 7. Does reverential fear invalidate?

1057 Doubt 8. Can he who inflicted the fear withdraw it?

1058 VIII. Order.

1059 Does the sacred order dissolve marriage by divine law?

1060 IX. Bond.

1061 X. Honesty. This impediment does not arise from uncertain betrothals, nor from conditional ones.

1062 Question 4. Does it arise from a marriage that is null?

1063 Question 2. Does it arise from betrothals that have been justly dissolved?

1064 Question 3. Does it arise from a clandestine marriage?

1065 XI. Age.

1066 See more about the marriage of minors.

1067 Is there no marriage contracted if a boy, having reached the age of puberty, is not able to have intercourse? What about the marriage of the elderly?

1068 XII. Affinity.

1069 Concerning the impediment of affinity contracted before marriage.

[*Latin ed. p. 656*]

4070 Concerning the impediment to petitioning.

4071 Q. I. Whether a wife, known to be afraid of a relative of the man, is lawfully deprived of the right to petition.

4072 Q. II. Whether ignorance excuses from this impediment in contracting marriage. And first, if the ignorance pertains to the law.

4073 Secondly, if the ignorance pertains to the fact.

4074 Thirdly, if the ignorance pertains to the penalty.

4075 Q. III. Whether the consummation of the marriage bond is required to establish affinity.

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4076 Q. IV. Who is able to grant a dispensation in this matter?

4077 The penalty for those contracting marriage with the impediment of affinity.

4078 XIII. Secrecy.

4079 What if a parish priest cannot be found in a certain place?

4080 Whether travelers can validly contract marriage without a parish priest.

4081 Who is to be understood by the name of "parish priest"?

4082 Whether a parish priest who is excommunicated, or irregular, etc., is valid.

4083 Doubt 1. Whether an excommunicated person assisting at the marriage commits a grave sin.

4084 Doubt 2. Whether such a parish priest can grant a license to others.

4085 What kind of witnesses are sufficient?

4086 What if there are two parish priests? Or if the betrothed have two domiciles?

4087 Whether the parish priest of either of the betrothed is sufficient.

4088 Whether a license presumed from the present and from the one praying is sufficient.

4089 Concerning vagabonds.

4090 Concerning the poor.

4091 Concerning travelers, those detained in prison, the sick, girls living in institutions, etc.

4092 Whether the betrothed can validly marry before a parish priest who is unwilling.

4093 Whether it is licit.

4094 How does the parish priest sin if he does not inquire about consent, or if he does not say: "I join you, etc."?

4095 XIV. Impotence. What kind of impotence dissolves marriage.

4096 I. Concerning impotence arising from witchcraft. II. From frigidity. III. From disproportion of bodies.

4097 Doubt I. Whether marriage is valid if the woman can suffer with the danger of a grave illness, but not of death.

4098 Doubt II. Whether, if a marriage is dissolved because of the woman's narrowness, if afterwards, through intercourse with a second husband, she becomes suitable for the first, she is obligated to return to the first.

4099 Doubt III. Whether the woman who is narrow is obligated to undergo an operation.

4100 Clarification IV. Whether she is obligated to undergo an operation

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to open the cloister of virginity, if, etc.

4101 What should be done if the impotence is certain?

4102 What if it is doubtful, and the doubt precedes the marriage?

[*Latin ed. p. 657*]

4103 What if a doubt arises?

4104 What is to be done when there is doubt as to whether the marriage has been consummated, or whether impotence was present?

4105 What is to be thought concerning marriages contracted in territories held by heretics?

4106 XV. Abduction.

4107 To incur the impediment of abduction, it is required that the woman be: I. transported from one place to another; II. for the purpose of marriage; III. unwillingly.

4108 What if a man abducts a woman with whom he had previously entered into betrothal?

DOUBT III. When is a marriage invalid and in need of validation? page 240

4109 How is a marriage to be validated if it was null due to a feigned consent, or consent obtained through fear? How if due to a hidden impediment?

4410 Question I. In validating a marriage that is null due to a hidden impediment, is the assistance of a parish priest and witnesses again required?

4411 Question II. How, and when, is an impediment considered to be hidden?

4412 Question III. Is it necessary to validate a marriage before a parish priest and witnesses if they were aware of the impediment at the time the marriage was contracted?

4413 Question IV. Is one who falsely contracts a marriage obligated by justice to validate it through true consent?

4414 Question V. Must one who falsely, or through fear, contracts a marriage, inform the other party of the nullity of the marriage?

4415 Question VI. If a marriage is null due to some impediment, is it necessary that both parties become aware of the nullity?

4416 What is to be done in a case of urgent necessity?

4417 Question VII. In what ways can consent be renewed or obtained from a party unaware of the impediment?

DOUBT IV. By whom, and for what reason, can a dispensation be granted in impediments to marriage? page 224

4418 In which impediments can the Pope grant a dispensation?

4419 Can the Pope ever grant a dispensation in matters pertaining to

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divine law?

4420 Can a dispensation ever be granted in impediments pertaining to natural law?

4421 Can a Bishop grant a dispensation in impediments that are diriment?

4422 Question I. Can a dispensation be granted in urgent necessity, even before the marriage is contracted?

4423 Question II. Can a dispensation be granted after the marriage has been contracted?

4424 Question III. Is it then required that the marriage have been contracted in good faith?

[*Latin ed. p. 658*]

4425. Question IV: Whether a Bishop can delegate this power to another.

4426. Bishops can grant dispensations in all impediments that impede marriage according to human law, or that arise during marriage.

4427. Whether religious [persons] can grant dispensations concerning debts.

4428. Whether they themselves can grant dispensations in a vow of chastity, when a pressing necessity arises to contract marriage.

4429. What are the just causes for granting dispensations in diriment impediments?

4430. Other sufficient causes are added. Whether the provision of a larger sum of money is sufficient.

4431. Note 1: What must be explained, so that the dispensation is not surreptitious.

4432. Note 2: The truth of the causes pertains to the value of the dispensation.

4433. Question 1: Does the dispensation cease when the cause ceases?

4434. Question 2: What is to be done in cases of doubt, whether the cause was falsely alleged, or whether it was truly alleged?

4435. Question 3: Should it be expressed in the petition that an incestuous union has been had, with the intention of more easily obtaining the dispensation?

4436. What if the union was not from such a pre-existing intention?

4437. Question 4: Can a more distant degree of consanguinity be manifested, in silence of a closer one?

4438. Question 5: Does the petitioner need to express the first dispensation when requesting a second?

4439. Question 6: If someone has multiple impediments of the same kind, must all be expressed?

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4440. Question 7: Can dispensations for various impediments be obtained separately?

4441. Question 8: If someone, after obtaining a dispensation, discovers a consanguineous relationship with the betrothed, does he need a new dispensation?

4442. Question 9: If an incestuous union has occurred between the betrothed, before the dispensation is ordered for execution, is a new dispensation required?

4443. Question 10: If the contracting parties are from different dioceses, must each be dispensed by his own Bishop?

4444. Question 11: What are the clauses in the dispensations of the Holy Penitentiary?

4445. Question 12: In which impediments can the Holy Penitentiary grant dispensations?

4446. Note 1: For the value of the dispensation, the consent of the one who benefits from it is not required.

4447. Note 2: What must be expressed when a dispensation is requested from the Dataria, and what when it is requested from the Holy Penitentiary?

[*Latin ed. p. 659*]

1447 Formula of supplication to the Sacred Penitentiary for obtaining a dispensation from an impediment, or from a vow of chastity, for celebrating, or renewing marriage.

1448 Formula for executing such dispensations.

BOOK VII. OF ECCLESIASTICAL CENSURES, AND IRREGULARITIES.

CHAPTER I. OF CENSURES IN GENERAL.

QUESTION I. What is an ecclesiastical censure? page 230

4. What is a censure?

2. Does a censure deprive one of internal goods?

3. Is degradation, or deposition, a censure?

4. Is suspension from the administration of the Sacraments a censure?

5. Is an irregularity a censure?

QUESTION II. How many kinds of censures are there? page 240

6. How are censures divided into four kinds? Are censures pronounced by a Bishop in a Synod perpetual, and as if pronounced by law?

7. When are censures considered to be pronounced as a formal sentence?

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8. When must they be imposed?

QUESTION III. Who can impose censures, and upon whom? page 249

9. Who can impose a censure?

10. Those who possess this power by ordinary authority:

I. The Pope.

II. Bishops.

III. Vicars, however.

IV. Regular Prelates.

V. Councils, and Chapters.

VI. Those who possess this power by privilege.

14. Who can impose censures by delegated authority?

Those who cannot:

4. Parish Priests.

8. Laymen.

8. Women.

12. How many conditions are required for someone to be able to impose a censure?

I. That he be a man.

II. That he be baptized.

III. That he be tonsured.

IV. That he be of sound mind.

V. That he have proper jurisdiction.

VI. That he act freely.

13. What conditions are required for someone to be subject to a censure?

I. That he be a human being.

II. That he be baptized.

III. That he be of sound mind.

Are the insane, or those temporarily afflicted with madness, subject?

14. Are the impubent (those who have not reached the age of puberty) capable of incurring a censure?

15. IV. That he be subject to the jurisdiction.

16. Are Kings subject?

[*Latin ed. p. 660*]

47 Concerning pilgrims.

48 In order that a person may be definitively determined, with regard to excommunication.

49 Whether excommunication is valid and lawful within a community.

50 Regular prelates can impose censures on subjects wherever they may

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be.

51 Q. I. Can a bishop existing outside his diocese impose censures on subjects?

52 Q. II. Can, conversely, a bishop existing within his diocese bind a subject living outside the diocese with censures?

53 Q. III. Does a subject who commits an offense outside the diocese incur a censure that extends to future offenders?

54 Are the monasteries of regular canons exempt places?

55 What if the matter concerns compensating for damages?

56 Q. IV. Can a bishop impose censures on a subject of another diocese who commits an offense within his own diocese?

57 Q. V. Does a general censure bind foreigners?

58 How can someone be bound by multiple censures?

DOUBT IV. For what reason can a censure be imposed? page 252

29 For what sin are censures incurred?

30 Is a minor suspension, or interdict, imposed for venial sins?

31 Are other censures null for venial sins? And what is to be inferred from this?

32 Is a censure imposed when there is doubt about the gravity of the matter?

33 Does a precept under a censure obligate under a grave penalty?

34 Must the act be external in order to incur a censure?

35 Can a censure be imposed against those reciting the Divine Office distractedly?

36 Must the act of sin be consummated? Does a censure against a murderer apply even to one who commands the murder, etc.?

37 Does a censure against one who commands, etc., apply even if the intended effect is not achieved?

38 Observe the distinction.

39 Is a censure incurred when there is doubt whether the command influenced the action?

40 What if one gives advice for murder and then revokes it before the execution?

41 Is one's own culpability required?

42 What excuses from incurring a censure?

43 Is it necessary to know that an act is forbidden by the Church in order to incur a censure?

44 Does this apply also to suspension and interdict?

45 Does ignorance excuse from a censure, and does it excuse from a mortal sin?

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46 Does grave fear excuse from a censure?

47 When does ignorance excuse, even if it is gross ignorance?

48 Does affected ignorance excuse?

[*Latin ed. p. 661*]

49. Does censure incur for a sin already committed? Can Bishops impose censures for future offenses?

50. Censure is invalid. I. Due to the lack of authority in the one imposing it.

51. II. If the order of judgment is disregarded.

52. Is a warning required in all cases of censure?

53. Can censure be imposed without a warning?

54. And when is it invalid due to a sin already committed?

55. Is a warning required if the censure is imposed by a judicial sentence?

56. Should the warning be given three times, with appropriate intervals? And should it be given by the judge himself?

57. What if the censure is against several people generally?

58. Is censure without a three-fold warning invalid?

59. What should be noted regarding the sentence of censure?

60. What formalities must be observed in its imposition?

61. When are these formalities not required? See elsewhere for other observations.

62. Does a latae sententiae censure incur, for example, "Let him be excommunicated or suspended"?

63. Can a censure be imposed conditionally?

64. If the deadline has passed, does a latae sententiae censure incur if the creditor extends the time?

65. See other observations regarding the order of imposing censure.

66. III. Censure is invalid due to the lack of a just cause.

67. How should one behave when in doubt whether a censure has been incurred?

68. In such a doubt, should the censure be considered just? And is the accused obligated to obey a judge who is imposing something under censure, if he has a reasonable doubt that he is not bound to do so?

DOUBT V. Who can absolve from censures? page 269

69. A distinction must be made between a censure imposed by a particular sentence from a judge, and a latae sententiae censure, either by law, or by a judge through a general sentence.

70. Who can absolve from latae sententiae censures imposed by law?

71. Can all confessors absolve from minor excommunication? Can a sim-

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ple priest?

72. Who can absolve from censures imposed by a judge through a particular sentence?

73. Who can absolve if the censure was imposed through a general sentence against undetermined individuals?

74. Which censures reserved to the Bishop can be absolved by him according to the Licet?

75. See the words of the Licet.

76. Note I. Can the Bishop dispense in cases of irregularity?

[*Latin ed. p. 662*]

Heretical. Note II. When a crime is said to be hidden, or brought before the forum. 77. Doubt 4. Whether one can be absolved by a Bishop who has been punished in the forum of another Bishop. 78. Doubt 2. Whether a public crime can be absolved by a Bishop in one place, when it is hidden in another. 79. Note III. Those who come in the name of Bishops. Note IV. Those who come in the name of subordinates. Note V. Bishops can absolve from Papal cases, even those that are reserved, even after Trent. (Referring to law 6, number 594.) 80. Note VI. Whether Bishops enjoy this faculty where Trent is not accepted. 84. Question I. Whether a Bishop can grant dispensation in irregularities, and suspensions, to his subordinate who is living in a foreign diocese. 82. Question II. Whether the faculty granted in Chapter "It is permitted" has been revoked by the Bull of Celæ. 83. The more correct opinion. 84. Question III. Whether Bishops can absolve from the censures imposed by the Bull of Celæ, preventing one from going to Rome. 85. Question IV. Who are considered to be impeded. 86. What if the impediment is for a short time, and what if it is for a long time. 87. Is the absolved person then obliged to present himself to the Pontiff, if he has already been reformed, and has made amends to the injured party? 88. What if the impediment is perpetual? And who are considered to be perpetually impeded? 89. Question V. Are the impeded obliged to go to Rome by letter, or through a procurator? 90. Question VI. Whether a Bishop can absolve a heretic who is impeded, even through another. 91. Question VII. If an inferior absolves an impeded person from a reserved case without a censure, is the penitent obliged to present himself to his Superior? 92. Question VIII. Whether the impeded can go to a Bishop to be absolved by anyone. 93. Question IX. Whether Bishops can generally delegate to others the faculty granted to them in Chapter "It is permitted." 94. Concerning the faculty of beggars to be absolved, which is reserved. 95. What censures can religious absolve concerning seculars? 96. Whether they can absolve them from Papal cases that are hidden. 97. Whether for the external forum. 98. Whether from cases reserved by Bishops to themselves. 99. Whether from censures reserved by Bishops by law, or by custom. 100. Whether from

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cases hidden by Clement.

[*Latin ed. p. 663*]

404 Whether the Regulars can absolve their subjects from all papal censures, except those contained in the Bull of Celæ.

402 Whether this also applies to novices.

403 Whether this also applies to censures reserved to the Bishop.

404 Whether the Regular superiors can absolve subjects from censures contained in the Bull of Celæ. Up to n. 106.

407 Whether subjects can be absolved from censure for offenses against another religious, or a secular cleric.

408 What is to be done concerning those who receive the Bull of the Cross? Remissively.

409 Rules for absolving from censures.

440 Whether the faculty granted to absolve from papal censures includes the censures of the Bull of Celæ.

441 Whether, in a Jubilee, the power granted to absolve includes all censures, even those imposed specifically by the Bishop.

442 Whether one who has the faculty concerning the censures of the Bull of Celæ can also absolve from heresy. Up to n. 443.

444 What more should be noted concerning the faculties of the Regulars.

445 What more should be noted concerning the faculty granted during Jubilees.

DOUBT VI. How should absolution from censure be given? Page 294.

446 How should censures be absolved in the external forum, and how in the internal forum?

447 Can absolution be given in the absence of the person?

448 Concerning the one who is absolved during a Jubilee.

449 Concerning absolution obtained through fear.

420 Does absolution hold if the penalty has not been satisfied?

421 What if the faculty is granted with this condition?

422 After satisfaction has been made, is the censure removed from oneself?

423 Does absolution hold and is it licit under a condition?

424 Can absolution be given for a relapse?

425 Is a new offense required for a relapse?

426 Can a censure be absolved outside of confession?

427 To absolve censures, the following is required:

428 In what cases can the guilty party be absolved before satisfaction?

429 It is required II. that the guilty party swear not to commit the offense

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again, if it is very grave.

430 It is required III. that the one who is censured request absolution.

434 More should be noted. What if the guilty party is still contumacious, or unwilling, or has forgotten to request absolution?

432 Does absolution hold if the guilty party gives a false account?

[*Latin ed. p. 664*]

CHAPTER II. ON EXCOMMUNICATION. QUESTION I. What it is, and of how many kinds. pages 300-306

What is excommunication? What is the greater and lesser form of this censure? And who are to be avoided?

Resolutions.

What is required in order for someone to be avoided? See the constitution of the Council of Constantiensis.

Concerning the one condition that someone be explicitly excommunicated.

Concerning the second condition that someone be publicly denounced.

Is it permissible to communicate with someone who is tolerated?

Does one sin by inducing a tolerated excommunicate to receive Holy Communion without necessity?

Does the same apply to a suspended or interdicted person who is to be avoided?

When is a perpetrator of violence against a cleric to be avoided?

Is it required that the act be notorious in order to avoid him?

Is it sufficient that the act be known to someone?

Is it also required that the act be notorious to the law?

Is a notorious perpetrator in one place to be avoided in another place where he is not known?

When can it be believed that someone absolved is to be avoided?

QUESTION II. For what reasons is the lesser excommunication incurred, and what are its effects? pages 306-306

For what reasons is the lesser excommunication incurred?

Can a Bishop deny the sacraments to someone?

The direct effect of the lesser excommunication is the deprivation of receiving the sacraments.

Is there also a deprivation of administering the sacraments?

The indirect effect is the deprivation of passive election to benefices.

One incurs this censure by communicating with someone who is to be avoided.

Is it a mortal sin to receive the sacraments from someone under the lesser

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excommunication? Does this apply to administering the sacraments?

Does one incur this censure by a simple venial sin?

And can this venial sin be omitted in confession?

Who can absolve from this censure? Can anyone absolve venial sins?

Who incurs this censure? Reference to number 488.

[*Latin ed. p. 665*]

BOOK III. What effects does excommunication entail. page 309

157. What are the immediate effects of major excommunication?

I. Irregularity concerning the exercise of Holy Orders.

II. Suspicion of heresy, if the offense persists for a year.

158. What are the immediate effects?

I. Deprivation of the licit reception of the sacraments; and also of the valid reception, insofar as pertains to penance.

159. Is a person under excommunication validly absolved of his sins before the censure of excommunication is lifted, if he is not blameworthy?

160. Several things are to be noted.

161. Is a person under excommunication obligated to remove the impediment of excommunication in order to fulfill his precepts?

162. II. Deprivation of ecclesiastical privileges.

163. Can sacrifices, etc., be offered in the name of the Church for a person under excommunication, in order to obtain his absolution, if his own actions prevent his absolution?

164. Can such sacrifices be offered for a tolerated person under excommunication?

165. III. Deprivation of the administration of the sacraments. Do the faithful sin without cause by receiving the sacraments from a tolerated person under excommunication?

166. Can a person under excommunication validly administer the sacraments?

167. Can he administer the sacrament of penance?

168. What if he is tolerated? And what in articulo mortis?

169. Can a person under excommunication licitly administer the sacraments?

170. How can he also be avoided?

171. What penalty does a person under excommunication incur by illicitly administering the sacraments? Does a person under excommunication incur irregularity by administering penance?

172. What penalty does a person incur by receiving the sacraments without necessity from a person who is to be avoided?

173. IV. Deprivation of ecclesiastical offices. How does a person sin by

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participating in divine services with a person who is to be avoided? And is it permissible to recite the Divine Office privately with him?

174. Is it permissible for a person who is to be avoided to use sacramental objects, and to pray privately in the church?

175. What if he wishes to attend Mass, etc.?

176. What are clerics obligated to do if a person under excommunication refuses to leave? Do other present sin mortally in that case? And do they incur a lesser excommunication?

177. What pertains to the order of divine services? Can a person who is to be avoided hear the chanting, the reading, etc.? How should he be expelled? Otherwise, the Mass must be interrupted. And even if the canon has begun?

178. Is a person under excommunication obligated to recite the Hours? And does he ever sin by saying: "The Lord be with you"? Can he recite the Hours privately with another?

[*Latin ed. p. 666*]

479. The Nullity of the Conferral of a Benefice, and Presentation, etc.

480. More points to be noted: and whether the same should be said regarding the conferral of dignities, etc. What if he had been presented before excommunication? And whether the beneficiary derives any benefit from it.

484. Whether one who is manifestly unfit for benefices, offices, etc., is tolerated.

482. Whether the conferral of a benefice to someone who is unaware that he is excommunicated is valid.

483. Whether an excommunicated person is deprived of the fruits of a benefice before sentence.

484. VI. Deprivation of ecclesiastical communion. Whether he can defend himself in court. Whether he can act (as a legal representative). Whether he can testify. Whether he can protect others.

485. VII. Deprivation of the use of jurisdiction.

486. VIII. Deprivation of ecclesiastical burial. See ibid. more points to be noted concerning the pollution of the Church, or cemetery, concerning exhumation, those attending, those burying, etc.

487. What if he is a heretic who has not been denounced?

488. IX. Deprivation of civil communion.

489. I. Os. (Greeting with the mouth)

490. II. Orare. (To pray for someone)

494. III. Vale. (Farewell)

492. Whether it is permissible to offer signs of civility without words.

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493. Whether it is permissible to return greetings, and to write (correspond).

494. IV. Communio, that is to say, to contract (a relationship), to lie with, to have intercourse, etc.

495. V. Mensa. (To share a meal). What if it happens by chance?

496. What sin is it to communicate (share a meal) with someone who is avoiding (another)?

497. Does one sin gravely by communicating (sharing a meal) with someone I. In Divine matters? II. In a sodomitic crime?

498. Whether it is a mortal sin to frequently communicate (share a meal) with someone who is avoiding (another).

499. In which cases does one incur a greater excommunication by communicating (sharing a meal) with someone who is avoiding (another)?

200. In which cases is it permissible to communicate (share a meal) with someone who is avoiding (another)?

DOUBT IV. For what reasons does one incur a greater excommunication? p. 334

ARTICLE I. What are the excommunications not reserved (to the Holy See)? Ibid.

209. Excommunications against all.

210. Against many.

214. Against religious.

212. Excommunications added by the Council of Trent.

Doubt 4. Do those who force young girls to enter monasteries, merely so that they may be abused, incur excommunication?

Doubt 3. Do those who force (someone) out of reverential fear incur excommunication?

Doubt 3. Do those who force men incur excommunication?

Do those who prevent a girl from entering incur excommunication? Ibid.

[*Latin ed. p. 667*]

ARTICLE II. What excommunications are reserved to the Bishops. page 336

243 Excommunication I. For anyone who lightly strikes a cleric. II. For those who are absolved at the point of death, and afterwards do not present themselves to their superior. III. For the Friars Minor, etc. IV. For those who procure abortions, especially on feast days. V. For those who commit sacrilege in this crime, etc. VI. Excommunications which the Bishops reserve under their jurisdiction.

846 Concerning the excommunication hindered by the Monitorium.

845 Whether one is obligated to reveal a sin, and if one does not reveal

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it, etc.

816 Whether there is an obligation to reveal an amended crime.

847 Who, after receiving the Monitorium, is excused from revealing.

ARTICLE III. What excommunications are reserved to the Pope, outside of the Bull of Conæ. page 338

248 Excommunications reserved against all.

249 Excommunications reserved against Clerics and Religious.

220 Specifically, I. concerning the excommunication against those who duel and those who conspire.

224 II. Concerning excommunications imposed against those who violate the enclosure of nuns.

222 Doubt 4. Whether those who enter without notification incur a reserved excommunication, if they do not first seek permission.

Doubt 2. Whether all who introduce others into the enclosure incur [such a penalty].

223 Doubt 3. Whether the permission granted must be in writing.

Doubt 4. Whether the permission must be explicit.

224 Doubt 5. From whom must the permission be granted?

225 Doubt 6. What reason is required to grant permission?

226 Several things to note concerning the entry of doctors and other officials.

227 Concerning the entry of confessors.

228 Doubt 7. Whether the one entering, with permission, is obligated to immediately leave.

229 Concerning another reserved excommunication against those who violate the enclosure of nuns, and against others who conspire [to do so].

230 Concerning another reserved excommunication against women who violate the enclosure of Religious.

234 Which women are excepted from this prohibition? And which houses are considered to be under the name of a Convent?

[*Latin ed. p. 668*]

232 Concerning the prohibition of speaking with nuns, according to common law. What about those of regular orders?

233 Doubt 1. Is access without conversation itself forbidden?

234 Doubt 2. Do those who speak through gestures or signs incur a reserved censure?

235 Doubt 5. Does one commit a grave sin by speaking with a nun even once?

236 Doubt 4. Is there any allowance for slight matters in such conversation, and is this allowance applicable to those of regular orders?

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237 Doubt 5. Is it permissible to speak with a nun for the sake of utility, without permission?

238 Doubt 6. Is it permissible to speak with the Abbess?

239 Doubt 7. Who are exempt from this prohibition?

1. Relatives in the first and second degree.

2. Those compelled by fear.

3. The poor and those seeking alms.

240 Doubt 8. Are minors included?

241 Doubt 9. Do those of regular orders incur a *latæ sententiæ* excommunication from the Bishop?

242 Doubt 10. Are travelers included?

243 Do Bishops who speak with nuns in a foreign diocese incur a *latæ sententiæ* excommunication from the Ordinary of that place?

244 Dissertation on the censures concerning opinions pertaining to the Conception of the Blessed Virgin Mary. The Bulls issued on this matter are enumerated.

245 When do those who contradict this pious opinion incur penalties? (Up to n. 247.)

248 When do its supporters incur penalties?

249 The pious opinion is defended up to n. 262.

263 Is it permissible to make a vow to dedicate one's life to the defense of the preservation of the Blessed Virgin Mary from original sin?

ARTICLE IV. How is the excommunication of those who strike clerics to be understood? page 375

264 The words of the canon.

265 What is understood by "if anyone"? Do minors fall under this, and by whom can they be absolved?

266 How are those who command, advise, etc., included?

267 How are those who ratify included?

268 How are those who do not hinder included?

269 Are those who are only obligated to hinder out of charity included?

270 What is understood by "cleric"?

[*Latin ed. p. 669*]

271 What is meant by "striking" a monk? Does this refer to hermits?

272 What constitutes "striking" in the third sense?

273 Is it required that the striking be accompanied by mortal sin and be of a serious nature externally?

274 One incurs [excommunication] by: I. Spitting at a cleric, or inflicting another grave injury upon him. II. Violently detaining him, etc. III. Perse-

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cuting him so that he may fall [into sin]. IV. Seizing his horse, etc. V. Doing these things, even with the consent of the cleric. VI. A cleric striking himself; but others deny this. VII. A layperson striking a cleric, or a cleric striking through a layperson.

275 One does not incur [excommunication] by: I. A thief stealing secretly. II. Striking playfully, or accidentally. Are boys clerics exempt from this? And are they exempt if they are defending themselves, or others, or their own property? III. If there is no mortal sin involved. IV. Striking a cleric through ignorance, or carelessness, or through sudden anger.

Doubt 4. What if someone strikes another, unaware that he is a cleric, but with the intention of striking, even if he knew?

Doubt 2. Does gross ignorance excuse the action?

Doubt 3. What if someone strikes Peter, believing him to be Paul, who is a cleric?

V. Is a Prelate, or a teacher, excused if he strikes?

VI. Striking a cleric who is exercising the office of a merchant, etc., or who is acting shamefully, or who is importuning a wife, or a close relative of the first degree. When is a girl excused for striking a cleric who is importuning her?

276 When can a Bishop absolve from this excommunication?

277 What kind of striking is considered light, what is considered grave, and what is considered enormous?

278 In how many ways can a light striking become a grave one?

279 Who can absolve from a light striking, and who can absolve from a grave striking?

Doubt 4. In a case of doubt, should the striking be considered light or grave?

Doubt 2. Does one incur excommunication by giving poison to a cleric?

ARTICLE V. What excommunications are reserved to the Pope by the Bull of Union. page 385

281 Concerning excommunication for those who retain, read, etc., the books of heretics.

282 To incur this, it is required that: I. The author be a heretic. Can the books of infidels, or of the Hebrews, be read?

283 II. That the book contain heresy, or deal with religion. What if the error has been erased, or if the author has not been condemned as a heretic? What if someone reads [the book] to refute a heretic?

[*Latin ed. p. 670*]

284 III. Concerning the reading of matters of importance.

285 IV. Concerning reading with knowledge, etc.

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286 One does not incur [punishment] I. If one reads a book containing the words of heretics. II. If one reads the commentaries of heretics.

287 Whether philosophical books, or those which incidentally contain heresy, are prohibited.

288 Which books are prohibited in the Index.

289 How many titles of prohibited books the Index contains.

290 To whom does the prohibition of books apply?

291 Whether it is permissible, even with permission, to read heretical books out of curiosity. And whether it is permissible for one who is certain that no harm will come to him to read prohibited books.

292 Whether one incurs [punishment] by reading the preface, index, etc. Whether one who hears someone reading [incurs punishment]. And what if he is induced to read [them]?

293 Whether one who reads a brief script, or a manuscript [incurs punishment].

294 Whether one who reads a few lines, or less than a page [incurs punishment].

295 Whether one who retains [the book] for a short time [incurs punishment].

296 Whether crass ignorance is an excuse. What if someone knows, from a reputable person, that a book is prohibited?

297 Whether one incurs excommunication by preventing a book from being burned, or by praising its style, etc.

298 Whether one incurs [punishment] by placing a prohibited book with another.

299 Whether one incurs [punishment] by burning it.

300 From whom permission to read [such books] must be obtained.

301 To incur excommunication for heresy, it is required I. That it be formal.

304 Q. 4. Whether one who errs through crass ignorance, or feigned ignorance, incurs [punishment].

302 Q. 2. Whether one who doubts articles of the faith [incurs punishment].

303 It is required II. That the error be external.

304 It is required III. That the manifestation be morally evil.

304 It is required IV. That there be an intention of professing the error.

305 See other things to be noted.

306 Even the faithful, supporters, recipients, and defenders [incur punishment].

307 Q. I. Whether one who favors a heretic out of friendship, etc., [incurs

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punishment].

308 Q. II. Whether one who receives a heretic, so that he is not captured, incurs [punishment], even if the purpose is not achieved.

309 Also, by the *bulla* 4, incur [punishment]:

310 I. Those who steal from shipwrecked persons.

310 II. Those who impose unjust taxes.

314 Who else incurs excommunication by the *bulla*?

[*Latin ed. p. 671*]

CHAPTER III. OF SUSPENSION AND DEPRIVATION.

QUESTION I. What is suspension, in how many ways does it occur, and from what source does it arise, and what is its nature and extent? pages 397-312

312. What is suspension, and who can suspend, or be empowered to suspend?

313. Does one gravely sin by performing an act from which he is suspended?

QUESTION 4. Does one incur irregularity if the suspension is for a limited time?

QUESTION 2. Does a Bishop suspended from ecclesiastical functions incur irregularity by exercising those functions? And what if he solemnly celebrates Mass? Does a priest suspended from office validly absolve the penitent? What if he is tolerated, or if he is suspended only from his Order?

345. In how many ways can suspension be imposed?

346. What is the nature of suspension, and how can it be determined?

QUESTION 4. Can one suspended from a benefice retain the fruits of it, if he is poor?

QUESTION 2. Is one suspended from a benefice also suspended from benefices which he holds in another diocese?

347. Are those suspended by a community also individually suspended? And do these incur irregularity? Must suspension be imposed in writing?

QUESTION II. What are the particular suspensions, and who can absolve from them? pages 404-348

348. What are the more common suspensions of clerics according to law?

349. What are the suspensions of religious?

320. What are the suspensions of Bishops?

321. Can anyone be suspended for a minor offense?

322. Who can absolve from suspension?

QUESTION III. What is deposition, and degradation, and by whom, and

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for what reason can they be imposed? pages 406

CHAPTER IV. OF INTERDICT.

QUESTION I. What is it, and in how many ways does it occur?

328. What is an interdict?

329. In how many ways can it occur?

330. Do interdicts imposed by a civil authority extend to the suburbs? And to the Church of Regular Canons?

[*Latin ed. p. 672*]

334. Those who are exempted from the general personal interdict. And whether, in the case of an interdict imposed upon the clergy, religious, or clerics without a benefice or office, are also subject to it.

332. What if citizens, or a city, are placed under interdict? (See page 408)

333. The effects of the interdict are:

I. Prohibition of divine offices.

II. Prohibition of the Sacraments, except Baptism, etc.

III. Prohibition of burial.

IV. A mortal sin is committed by those who violate the interdict. Also, irregularity is incurred by clerics, and excommunication by religious.

(See page 441)

337. Who can impose an interdict? And whether a grave fault is required to incur it.

338. Who can remove general interdicts not reserved by law?

339. Who can remove particular interdicts?

CHAPTER V. OF IRREGULARITY.

(See page 412)

344. What is irregularity, and to what extent does it exist?

Definition of irregularity. Whether irregularity is a censure. Irregularity is divided in two ways.

(See page 413)

342. The effects of irregularity are three:

I. Incapacity to receive Orders.

II. Impediment to the exercise of Orders.

III. Invalidity of the collation of a benefice. Whether this applies to a simple benefice.

343. Whether the collation is then automatically invalid.

(See page 416)

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344. Whether irregularity is incurred in a case of doubt.

345. It is not incurred unless it is expressly stated in the law.

346. Question 1. In a case of doubt concerning the contraction of irregularity, how should one act? And what if the doubt concerns the law itself?

347. Question 2. What should be done in a case of doubt concerning an act, other than homicide?

Question 3. What should be done in a case of doubt concerning the commission of homicide?

Question 4. What should be done in a case of doubt concerning the animation of the fetus, if an abortion has been procured?

[*Latin ed. p. 673*]

348 To incur irregularity arising from a sin, mortal guilt, and a completed external act are required.

349 Question I. What if the crime is external, but entirely concealed?

350 Question II. Is knowledge of the law required to incur irregularity?

354 Question III. Does knowledge of the penalty also suffice?

352 In how many ways is irregularity removed?

353 Irregularity is removed by dispensation. Who is able to grant such a dispensation? Several things are to be noted.

354 How is irregularity arising from defective birth removed through religious profession?

355 Regular superiors in which irregularities they can grant dispensation.

Doubt IV. What are the irregularities arising from sin? page 425

356 Irregularity arising from sin is incurred I. due to repeated Baptism.

357 II. Due to the violation of a censure.

358 Several things are to be noted. But does one who is ordained while subject to a censure incur irregularity?

359 III. Due to the exercise of an act of the sacred Order, which a certain cleric does not possess.

360 IV. Due to the improper reception of Orders.

364 In how many ways is irregularity incurred due to clandestine reception?

362 V. Due to crimes of infamy and notoriety.

363 Notoriety of the act, or of the law, is required. What are the crimes and exercises to which infamy is attached?

364 How is this irregularity removed?

365 VI. Due to homicide, or mutilation.

366 Concerning irregularity due to voluntary homicide.

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367 This irregularity is incurred by I. those who kill, or mutilate.

368 Doubt 1. What if the homicide repents before death?

369 Doubt 2. What if one inflicts a wound, but others kill?

370 II. Those who command, or advise, homicide or mutilation incur this.

371 Doubt 1. What in case of doubt, whether the homicide was caused by command, or by counsel?

372 Doubt 2. What if the homicide was already determined to kill?

373 Doubt 3. What if the one advising revokes the counsel?

374 III. All those who cooperate in homicide or mutilation incur this, namely: 1. Those who incite. 2. Those who are leaders in an unjust war. 3. Those who provide assistance. 4. Those who accuse, etc. 5. Those who associate.

[*Latin ed. p. 674*]

375. Question 1. Do those who ratify [an action] incur [irregularity]?

376. Question 2. Do those who do not impede [an action] incur [irregularity]?

377. Concerning irregularity due to homicide, or accidental mutilation.

378. Concerning the mutilation of members.

379. Question 1. What is meant by the term "member"?

380. Question 2. Does one become irregular who cuts off the testicles?

381. And whether Bishops can grant dispensation from irregularity due to mutilation.

382. More details are found in Busemb. and especially, whether giving drink to a sick person, or assisting him, incurs irregularity.

383. If someone attends to a licit matter, he does not become irregular, unless he adds morally culpable negligence.

384. Hence, the following are excused: I. A teacher, and a father chastising, etc. II. One riding on a wild horse. III. One feeding a wild beast that is tied. IV. Those repairing the roof of a house at Tocco. V. A cleric in sacred orders, or a monk, cutting [hair] without incision, or burning.

385. What about a cleric holding a benefice who cuts [hair] with incision?

386. If someone attends to an illicit matter, he does not become irregular, if the matter is not dangerous.

387. What if it is dangerous?

388. What if someone kills in defense of self or an innocent person? And what if an adulterer kills his attacking husband? Reference to book 4, number 398. See "In ordine."

389. Does one become irregular by killing in defense of liberty, honor, property, etc.?

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390. How is irregularity due to homicide removed?

391. Can Bishops grant dispensation in irregularity resulting from voluntary homicide?

392. And what if the homicide was entirely concealed?

393. What if the homicide was accidental?

394. Is accidental homicide committed in a quarrel to be considered accidental?

395. And what if it was committed in defense, but exceeding the bounds of moderation?

396. How can regular prelates grant dispensation in irregularity due to homicide, or mutilation, with their subjects? And how with lay people?

Doubt V. Irregularities arising from defect. page 448

397. The first arises from the defect of the soul. Hence, the following are irregular: 1. The insane, demoniacs, and epileptics.

398. This is discussed more distinctly concerning the insane.

399. Concerning epileptics and demoniacs.

400. Who can grant dispensation in this irregularity? And can Bishops...?

[*Latin ed. p. 675*]

I. Are dispensations granted in certain irregularities arising from defects? At least in the case of the blind? Or by regular prelates? 404

II. Are those lacking education considered irregular? 402

III. Novices. 403

II. Irregularities arising from defects of the body, either because the defect impedes the exercise of the order, or because it brings about deformity. 404

And primarily, a person is irregular due to an impediment to the exercise of the order:

I. The blind. 405

II. The deaf. 406

III. The mute. 407

IV. The lame. 408

V. Those lacking a hand, or all fingers, or the thumb, or the index finger. 409

VI. Those suffering from fever, paralysis, etc., or who are intemperate, etc. 410

Secondly, a person is irregular due to deformity:

I. He who lacks a member, namely the nose or an eye. What if the ears are lacking? 441

II. The leper. 442

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III. Those with monstrous deformities, namely hunchbacks, dwarfs, or those with dark skin. 443

Note 1. What if the defect arises after ordination?

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What if someone has had their testicles removed due to a vow of chastity? 448

And what if someone only intended to kill themselves, etc.? 450

III. Irregularities arising from defects of birth. 451

Illegitimate children are legitimized:

I. By subsequent marriage. 452

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II. Children are legitimized by religious profession. 457

III. By pontifical dispensation. 458

The Bishop can grant a dispensation to an illegitimate person for the minor orders and for a simple benefice. 459

Doubt 1. Can he grant a dispensation for the reception of a canonry? 460

Doubt 2. Can he grant a dispensation to a blind illegitimate person?

[*Latin ed. p. 676*]

434. Question 3. Whether one can be admitted to the sacred orders already received. 432. Question 4. Whether exposed children are irregular. 433. Secular princes can only legitimize for secular purposes. In case of doubt, whether someone is legitimate. 434. The fourth impediment is due to lack of age. (Reference to book 6, paragraph 799.) 435. The fifth impediment is due to the defect of the sacrament, that is, bigamy. 436. Bigamy is threefold: true, interpretative, and similitudinarian. I. What is true bigamy? 437. II. What is interpretative bigamy? This occurs in four ways. The first way is when someone takes a widow. 438. The second way is when some-

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one takes a woman who has been corrupted by another. 439. Question 4. What if he believes her to be a virgin? 440. Question 2. What if he contracts the marriage invalidly? 444. The third way is when someone has relations with an adulterous wife. 442. Question 4. What if the adultery was hidden? 443. Question 2. What if he has relations with her unknowingly, without knowing the adultery? 444. The fourth way is when someone contracts two marriages, one valid, the other invalid. 445. Question 4. What if both are invalid? 446. Question 2. What if it is done in good faith? 447. Question 3. What if the second marriage is entered into deceitfully? 448. III. What is similitudinarian bigamy? 449. Do clerics in the sacred orders also incur this irregularity? 450. How is the irregularity due to bigamy removed? Can the Pope dispense with it? 451. Can the Bishops? 452. At least with regard to the minor orders, and for simple benefices? In the case of similitudinarian bigamy? 453. Can regular prelates dispense with their subordinates in all cases of bigamy? 454. The sixth impediment is due to a defect of reputation. 455. The seventh impediment is due to a lack of freedom. Hence, the following are irregular: I. Servants. 456. II. Married persons. III. Courtiers. IV. Soldiers, and public officials, and those who practice cruelty or shameful acts. 457. The eighth impediment is due to a lack of gentleness. 458. Is someone irregular who kills in defense of honor? 459. Those who are irregular due to this impediment are: 4. Those who kill in war. 460. Those who incite in war to kill. 461. II. Those who participate in a judgment leading to death or mutilation. Provided that they: I. Cooperate. 462. II. Actively. 463. III. Effectively. Do clerics who assist at an execution sin?

[*Latin ed. p. 677*]

464 IV. Next. Does a confessor, or another consulted by a judge, sin by answering that someone in particular is to be chosen?

465 Who may be excused? Are all those who do not participate as ministers in the proof or execution of the matter excused?

466 V. By an action that is, by its very nature, suited to that purpose.

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468 The following become irregular: I. Judges. II. Voluntary witnesses. III. Accusers, etc. What if a cleric accuses, and what if the case is either his own or that of another?

469 Can the Bishop dispense from this irregularity if it is concealed? Can regular prelates?

470 Finally, the following are noted: the faculties that the Holy Penitentiary possesses regarding cases, censures, irregularities, incapacities, vows, etc.

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